

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ROBERT M FERCH
Claimant

APPEAL NO. 08A-UI-02515-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEAN SNYDER CONSTRUCTION CO
Employer

OC: 02/17/08 R: 02
Claimant: Appellant (5)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Robert Ferch filed an appeal from a representative's decision dated March 11, 2008, reference 01, which denied benefits based upon his separation from Dean Snyder Construction Company. After due notice was issued, a hearing was held by telephone on March 31, 2008. Mr. Ferch participated personally. The employer participated by Brian Carrott, Human Resource Manager.

ISSUE:

At issue in this matter is whether Mr. Ferch was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from July 23, 2007 until February 14, 2008. Mr. Ferch was employed as a full-time construction worker and was paid by the hour. His supervisor was the project superintendent, Roger Hickok.

Mr. Ferch was discharged based upon a series of events that began on the morning of February 14, 2008. On that date the claimant began performing duties that were normally assigned to different workers. When the workers arrived, Mr. Ferch was instructed to perform other work and disagreed. The claimant became angry and removed his tools from the workplace placing them in his truck, angrily signed out, but did not request the job superintendent who was present to intervene on the disputed job assignment, cutting concrete. The claimant contacted Mr. Carrott, the company's human resource director, and summoned him to the company offices. During the meeting Mr. Ferch again became angry, throwing the company handbook at Mr. Carrott's feet. Later the claimant contacted company management by phone becoming unreasonably angry and swearing. Mr. Ferch had been assigned to various job assignments based upon his inability to work in a compatible manner with other workers. Based upon the claimant's most recent leaving work without authorization and his

argumentative demeanor, a decision was made to terminate Mr. Ferch from his employment with the company.

The claimant had previously alleged drug use by other workers. The employer had investigated Mr. Ferch's complaints and found insufficient substantiation to drug test the employee or employees in question. The claimant had made similar complaints at other job sites while working for the company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant was discharged from employment under disqualifying conditions. It does. The evidence in the record establishes that Mr. Ferch had been assigned to various job locations because of a pattern of inability to work with other employees. The claimant had demonstrated a pattern of losing his temper and disrupting work. The final incident that caused the claimant to be discharged occurred when the claimant had a dispute with other workers on the morning of February 14, 2008 and left the job site angrily without authorization. Subsequently the claimant appeared at company offices displaying an inappropriate argumentative demeanor throwing the company handbook at the feet of the company's human resource director. The following day the claimant telephoned company management, once again becoming unreasonably angry and directing inappropriate language to the management individuals. The company had previously investigated the claimant's complaints about other workers and found insufficient substantiation to perform further investigation or testing. Based upon Mr. Ferch's continuing inability to work with other workers, leaving work without authorization and the angry demeanor that he displayed toward company management a decision was made to discharge the claimant from employment.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's

duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

For the reasons stated herein the administrative law judge concludes that the employer has sustained its burden of proof in showing that the claimant's conduct showed a disregard for the employer's interests and standards of behavior and thus was disqualifying under the provisions of the Iowa Employment Security Law. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated March 11, 2008, reference 01, is affirmed as modified. It is held the claimant was discharged for misconduct in connection with his work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimants weekly benefit amount, provided that he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css