

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANK L JAMES

Claimant

APPEAL NO: 12A-UI-04235-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLINTON STAFFING COMPANY

Employer

OC: 03/25/12

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Clinton Staffing Company (employer) appealed a representative's April 13, 2012 decision (reference 01) that concluded Frank L. James (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 7, 2012. The claimant participated in the hearing. Sue Watkins appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments with the employer on December 7, 2011. His final assignment began on January 23, 2012. He worked full-time hours on the assignment as a maintenance and custodial worker at the employer's business client. His last day of work was March 13, 2012. The employer discharged him on that date. The reason asserted for the discharge was unsatisfactory work and allegedly deliberately avoiding work.

The employer asserted that the claimant was working more slowly than coworkers, but could give no specific dates or examples of how this was so. The claimant had been reprimanded in late February for forgetting to dust in the client's business office. The week prior to the discharge, the claimant was assisting opening a door to a floor of the building and indicated he may have forgotten his keys, which the employer viewed as an intentional delay of completing work as instructed; however, the work was not delayed, as the claimant was able to access the building space. The employer asserted that on March 12 the claimant had claimed that a room

was done when all he had done was empty the garbage. The claimant denied that he had claimed any room was done without finishing all of the necessary cleaning in the room, and denied that he was intentionally doing less than acceptable work. In fact, the claimant's supervisor had been seeking to have the claimant placed into a lead worker position, which about a week prior to the discharge the claimant informed the supervisor that he did not wish to compete for that position.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is allegedly deliberately avoiding work and doing less than acceptable work. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. Conduct asserted to be disqualifying misconduct must be both specific and current. *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988); *West v. Employment Appeal Board*, 489 N.W.2d 731 (Iowa 1992). "Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established." 871 IAC 24.32(4). Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant committed any specific or current act of intentionally avoiding work or doing less than acceptable work. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence

provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's April 13, 2012 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw