

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAIME J BENITEZ**  
Claimant

**TAX MEX INC**  
Employer

**APPEAL NO. 12A-UI-04478-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/02/11  
Claimant: Appellant (2)**

Section 96.5-2-A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated April 10, 2012, reference 02, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 11, 2012. Claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Jaime Benitez and Claimant's Exhibits A-D.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a seasonal tax preparer for the employer. He worked during the 2011 tax season and during the 2012 tax season. His actual last day of work was February 17, 2012.

One of the employees, Jeanne Davis, was rude and disrespectful toward the claimant. The claimant approached his supervisor, Richard Arthur, and Ivan Arthur, who owned the building, about the difficult time he was having with Ms. Davis. Ms. Davis was Ivan Arthur's sister. The claimant was informed that that was the just way she was and there is nothing that can be done about it. She was never wrong and never apologized to anyone. Ms. Davis would get particularly frustrated during tax season and the claimant was the individual on whom she took out her frustration.

Since his employer would not approach Ms. Davis, the claimant wrote her a polite letter explaining the situation. The letter was dated February 16, 2012. Ms. Davis did not respond well to the letter and kept confronting the claimant. The claimant again asked Richard Arthur and Ivan Arthur to do something and both refused. The claimant tried again to approach Ms. Davis without success.

The claimant received a phone call from Richard Arthur on the evening of February 17, 2012. He told the claimant that he was afraid Ms. Davis would walk out them, as she had done previously, and that it would be best if he took off a week to let things cool down. The claimant was paid. A week later the claimant was told that Ms. Davis was still mad and to wait a few more days. These were unpaid days. The claimant tried to contact Richard Arthur again, without success. The claimant did not quit his job nor was he allowed to return to work.

## **REASONING AND CONCLUSIONS OF LAW:**

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

There is no evidence in this record that the claimant was discharged for disqualifying misconduct. The most reasonable inference was that the claimant was terminated by the employer to "keep the peace" in a family owned business. The claimant credibly testified that he was harassed and bullied by Ms. Davis and that he was terminated when he attempted to stop the harassment. Ms. Davis threatened to quit and the employer made the business decision to keep Ms. Davis happy. The employer is certainly allowed to make this type of business decision, but whatever reasons the employer had for terminating the claimant are not disqualifying misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated April 10, 2012, reference 02, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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