

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT B OSBORN**  
Claimant

**APPEAL NO. 10A-UI-17087-H**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**INFOMAX OFFICE SYSTEMS INC**  
Employer

**OC: 11/14/10  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Robert Osborn, filed an appeal from a decision dated December 9, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, on February 21, 2010. The claimant participated on his own behalf and was represented by Benjamin Humphrey. The employer, Infomax, participated by Vice President Shawn Taylor and was represented by Stacie Codr. Exhibits One, Two and A were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Robert Osborn was employed by Infomax from March 1982 until November 16, 2010 as a full-time service technician.

In September 2010, Vice President Shawn Taylor and Owner Steve Jacobs took the claimant out to lunch to discuss with him their concerns over his outbursts of anger which had been occurring in the work place and at some customer locations. He was told he needed to get his temper under control and to just do his job while leaving other issues to be resolved by management.

On November 11, 2010, there was a regular monthly mandatory meeting. Mr. Osborn had informed his immediate supervisor, Jim Irelan, the day before that he would not be able to attend because a customer had requested he come to their location for service work first thing in the morning that same day. Mr. Irelan did not report this to Mr. Taylor or Mr. Jacobs. At a management meeting on Monday, November 15, 2010, all managers were provided with the names of employees under their supervision who had not attended the mandatory meeting. Mr. Taylor had three subordinates who had not attended and was required, per company procedure, to discuss with each of them about their absence.

When Mr. Taylor contacted Mr. Osborn, the claimant because very upset and angry and hung up on him. The claimant then called Mr. Irelan and “vented” to him, using a loud tone of voice and profanities. He also hung up on Mr. Irelan. Later that day Mr. Osborn came into Mr. Taylor’s office and shut the door and once again began to “vent.” He maintained everything was “bullshit.” At one point he clenched his fists and raised his voice to the point he could be overheard outside the closed door of the office. Mr. Taylor acknowledged the claimant had “vented” to him in the past but this was the first time that he ever felt threatened by the violence of the outburst.

The employer told the claimant to go home and calm down. At that point Mr. Osborn said he did not want to calm down, added “fuck Infomax I’m out of here” and stormed out. Instead of going home he continued to work, going to customers’ businesses on scheduled service calls. Later that night he called Mr. Taylor and proceeded to “vent” about all his grievances again.

The next day Mr. Osborn called Mr. Taylor to ask if any decision had been made. He was told the matter would not be discussed over the phone but to come into the office. When he did come in he was discharged.

The claimant’s attorney had propounded interrogatories to the employer a mere ten days before the scheduled hearing date. The employer was able to submit answers to the interrogatories in the morning before the hearing was scheduled in the afternoon of February 21, 2011. Three of the interrogatories were not answered, the employer objecting that the questions were too vague and broad and were not reasonably calculated to lead to the discovery of admissible evidence. Further, it was asserted the information asked for was confidential, protected and proprietary business information. Claimant made a motion to compel.

The interrogatories asked for a list of all transactions over the last two years for three different customers of the employer. The interrogatories asked further for the date of the transaction, whether the transaction was a sale of product or a service, products to be identified by name and serial number and services to be summarized as to the nature of the service. All documents relating to any transaction listed were also requested.

The claimant’s assertion as to the need for all this information was that it would help to prove the extent to the claimant’s work load. This was evidently to provide proof of the reason for Mr. Osborn’s stress and anger.

At the time the hearing commenced the claimant asked to have the answers to these interrogatories compelled and the employer objected on the basis stated above.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

The claimant was obviously very angry, stressed out and frustrated. He also felt persecuted and victimized by the employer because of the work load. He also asserted that many other employees "vented" anger in the workplace. This may be true. But it is obvious that Mr. Osborn's conduct went beyond merely "venting" because he was specifically counseled about it by Mr. Taylor and Mr. Jacobs a month before he was discharged. He was told he needed to control the outbursts of anger and displays of temper. Whatever his frustration and stress levels were, his way of dealing with him had reached a level where his conduct was unacceptable.

In spite of the warning the claimant did not improve his conduct. He hung up on two of his manager on November 15, 2010, and confronted Mr. Taylor in his office with clenched fists, profanity and shouting. This goes beyond mere venting to the level of insubordination and physically threatening conduct. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

The claimant's motion to compel answers to the interrogatories was denied. The claimant did not make a convincing argument that the date of the various transactions, the nature of the transaction, the product name and serial number of any product or a summary of any service was in any way related to the reason for the discharge. In addition, the request for documents relating to all of the transactions with three customers for two years appears to be merely a fishing expedition of substantial scope without any clear purpose. 871 IAC 26.9(3) allows for discovery which is not privileged and is relevant to the subject matter involved. The claimant did not establish any connection between this information and the discharge. The employer's assertion of confidential and proprietary business information was not rebutted by the claimant. In addition, it was overly broad and would create a hardship.

It is noted that the facts of the incident which led to the claimant's discharge are not in dispute. The requested discovery would not reasonably lead to the discovery of any additional, relevant information. It appears the real purpose may have been to burden the employer with the

production of numerous, irrelevant documents which would serve no purpose in supporting the claimant's case. Such discovery requests may be denied. 871 IAC 26.9(2)c.

**DECISION:**

The representative's decision of December 9, 2010, reference 01, is affirmed. Robert Osborn is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/pjs