

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL G CLOUSE
Claimant

APPEAL NO. 10A-UI-01932-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ANNETT HOLDINGS INC
TMC TRANSPORTATION**
Employer

**Original Claim: 01/03/10
Claimant: Respondent (2-R)**

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The employer, TMC Transportation (TMC), filed an appeal from a decision dated January 26, 2010, reference 01. The decision allowed benefits to the claimant, Michael Clouse. After due notice was issued, a hearing was held by telephone conference call on March 17, 2010. The claimant participated on his own behalf. The employer participated by Training Instructor Phil Singletary and Property Manager Troy Dayton and was represented by TALX in the person of Tom Kuiper. Exhibit One was 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:

Michael Clouse was employed by TMC from January 14, 2008 until January 4, 2010 as a full-time janitor. He received a copy of the employee handbook on the date of hire. The policy provides for zero-tolerance of fighting or threatening violence or disruptive activity in the work place.

On December 30, 2009, two other employees asked for the claimant's help in shoveling snow off the sidewalk. He refused and "words were exchanged." At some other point on that day, Instructor Phil Singletary was entering the building and saw the claimant walk into the supply closet looking very upset. When Mr. Singletary opened the door of the closet and asked what was wrong, the claimant told him to "get the fuck away from me or I'll punch you." He then clocked out and left.

Property Manager Troy Dayton was informed of the incidents on January 4, 2010. He called the claimant at home and notified him he they would "have to part ways."

Michael Clouse has received unemployment benefits since filing a claim with an effective date of January 3, 2010.

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.

The claimant acknowledged he was angry because the two workers had asked him to shovel the sidewalk and because they were not his supervisors. He was not discharged for refusing to shovel snow, but for the verbal exchange he had with his co-workers, and the resulting bad mood, which caused him to use profane and threatening language to another employee. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of January 26, 2010, reference 01, is reversed. Michael Clouse is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw