

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY J VAJDA
Claimant

APPEAL NO. 08A-UI-03895-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BECKER-UNDERWOOD INC
Employer

**OC: 09/23/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Becker-Underwood (employer) appealed a representative's April 15, 2008 decision (reference 01) that concluded Timothy Vajdo (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 6, 2008. The claimant participated personally. The employer participated by Jill Bidwell, Human Resources Manager; Ashley Buck, Human Resources Specialist; Bob Westendorf, Production Foreman; and Jeff Wells, Production Foreman.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on January 7, 2008, as a full-time machine operator. The claimant received a copy of the employer's handbook. In February 2008, the claimant and a coworker, Vince Ivory, had a disagreement. Mr. Ivory physically threatened the claimant in the presence of the production foreman. No warning was issued to Mr. Ivory. The employer issued the claimant a verbal warning for arguing with a co-worker. On March 10, 2008, a temporary employee cut a hole in the bottom of a bottle, ruining the product. He told the employer that the claimant told him to do it. The claimant denied having done so. The employer issued the claimant a verbal warning on March 10, 2008, for telling the temporary worker to engage in horseplay. The temporary worker did not work for the employer at the time of the appeal hearing.

On March 21, 2008, someone parked a forklift in a place where the claimant was working. The forklift had items loaded on it from Mr. Ivory's line. The claimant moved the forklift over to Mr. Ivory's line and left the keys where he had been trained to leave them in the lift. Mr. Ivory reported the location of the forklift and that no keys were in the lift. Another co-worker, Tom Alexander, told the employer that the claimant took the keys away from the forklift. The

employer terminated the claimant for parking the forklift in an inappropriate spot and taking the keys away from the forklift.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present the eyewitness testimony of Vince Ivory and Tom Alexander but chose not to do so. The employer did not provide firsthand testimony at the hearing and, therefore, did not provide sufficient eyewitness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 15, 2008 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw