

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RODNEY DOTY
Claimant

APPEAL NO: 06A-UI-08232-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BARNES PROFESSIONAL RODEO
COWBOYS ASSOCIATION RODEO**
Employer

**OC: 11/27/06 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Barnes Professional Rodeo Cowboys Association (employer) appealed a representative's August 7, 2006 decision (reference 07) that concluded Rodney Doty (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 held on August 30, 2006. The claimant participated personally. The employer was represented by George Wittgraf, Attorney at Law, and participated by Donita Barnes, Bookkeeper.

ISSUE:

Is the claimant denied unemployment insurance benefits because he 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 8, 2006, as a full-time farm worker. The employer received a house as part of his remuneration. The employer was out of town for a rodeo from June 15 to 18, 2006. The claimant was incarcerated from June 17 to 19, 2006. On June 19, 2006, the claimant asked the bookkeeper for his paycheck. The bookkeeper told the claimant he had to talk to the owner before he could receive his paycheck. The claimant searched but could not find the owner. He returned home and found his paycheck on his kitchen table. On June 20, 2006, the employer came to the claimant's residence. He gave the claimant seventy-two hours notice that the claimant had to move. The claimant assumed he was terminated.

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the claimant's testimony to be more credible because the claimant provided supporting testimony.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons, 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). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide any evidence of misconduct at the hearing. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 7, 2006 decision (reference 07) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw