

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TREMELL M BUSH
Claimant

APPEAL NO. 15A-UI-12299-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SUNDANCE INC
Employer

OC: 10/18/15
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated November 3, 2015, reference 01, which denied unemployment insurance benefits finding the claimant was discharged from work on October 15, 2015 under disqualifying conditions. After due notice was provided, a telephone hearing was held on November 23, 2015. Claimant participated. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Tremell Bush was employed by the captioned employer d/b/a Taco Bell from October 15, 2014 until October 15, 2015 when he was discharged for failure to follow work directives. Mr. Bush was employed as a full-time general manager for the company and was paid by salary. His immediate supervisor was Ms. Teena Cheshire, Area Manager.

Mr. Bush was informed in March 2015 that he and another employee that Mr. Bush was training, would be expected to participate in a grand opening of the company's Taco Bell location in Carroll, Iowa when the facility opened in the fall of 2015. Later, Mr. Bush was informed that management had reconsidered the matter and the claimant would not be required to assist in the grand opening. It was explained to Mr. Bush that because the customer base in Carroll was primarily Caucasian, they didn't want to set the facility "up for failure." Mr. Bush concluded that the company was making reference to the claimant being black. Mr. Bush did not agree with the assessment because he had successfully managed a store in a similar client base of Caucasians in the past without difficulty. Mr. Bush believed the comment to be inappropriate but continued in employment and trained a different employee for later assignment at the Carroll store.

During the week of October 5, 2015, company management told the claimant that the new facility in Carroll, Iowa was “struggling” and the company had decided to send the claimant to the Carroll store that weekend to assist. Mr. Bush was unwilling to go to the Carroll store that weekend stating that he had personal plans.

The following Monday, October 12, 2015, Mr. Bush was instructed to report to the Carroll facility to work the closing shifts on Tuesday, Wednesday, and Thursday of that week. When the claimant again expressed an unwillingness to follow the directive that had been given to him by his area manager, he was referred to “Susan” in upper manager for approval not to go to the Carroll store. Mr. Bush attempted to call and text Susan with his request but received no response.

Although the claimant had requested permission not to go to the Carroll facility but had not received approval, he did not report to the Carroll facility as he had been directed by the area manager and was discharged from employment on October 15, 2015. The employer cited “insubordination” as the reason for the claimant’s discharge.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the claimant testified that he had initially been told that he would be required to assist in the grand opening of an employer facility in Carroll, Iowa in the future, but later the employer had decided not to have him assist with the grand opening because of ethnic considerations. While Mr. Bush may have had good cause to leave employment at that time, he chose not to do so and to remain employed by the company.

Some months later company management had changed their mind and concluded that Mr. Bush's help was necessary at the Carroll, Iowa store and instructed the claimant to go to that location to temporarily assist. The claimant was unwilling to follow the directive on the weekend of October 10 and 11. On Monday, October 12, 2015, the evidence establishes that the claimant was again specifically instructed to report to the Carroll facility for three days of that week with the employer paying for lodging. When Mr. Bush again expressed an unwillingness to follow the work directive, his area manager told the claimant in effect, that he would be expected to follow the directive unless a specific upper management person gave Mr. Bush permission to do otherwise. Although the claimant attempted to obtain permission, he did not receive permission to vary from the work directive and was discharged by the employer for that reason.

Although sympathetic to the claimant's situation, the administrative law judge concludes based upon the evidence in the record that the employer's request was reasonable and work related and that the claimant's repeated failure to follow the work directive constituted misconduct in connection with his employment sufficient to warrant the denial of unemployment insurance benefits. Because the claimant's discharge was related to a refusal to follow a reasonable work directive, the company was reasonable to escalate to discharge rather than progressive discipline. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated November 3, 2015, reference 01, is affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs