

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL E DIEDRICK II
Claimant

APPEAL NO. 06A-UI-10642-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAYNE WEILER
WEILER CONSTRUCTION
Employer

OC: 10/08/06 R: 03
Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Weiler Construction (Weiler), filed an appeal from a decision dated October 31, 2006, reference 01. The decision allowed benefits to the claimant, Michael Diedrick. After due notice was issued, a hearing was held by telephone conference call on November 15, 2006. The claimant participated on his own behalf. The employer participated by Owner Wayne Weiler.

ISSUE:

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

FINDINGS OF FACT:

Michael Diedrick was employed by Weiler from March 2004 until October 7, 2006. At the time of separation he was a full-time loader. On October 3, 2006, the claimant was no-call/no-show to work because he was angry about something at work. Owner Wayne Weiler called him in the evening and discussed the matter. He told the claimant he could not keep any employee who failed to notify him of an unscheduled absence. Mr. Diedrick returned to work October 4, 5 and 6, 2006. Toward the end of the day on Friday, October 6, 2006, Mr. Weiler asked the claimant if he would come in on Saturday to load a trailer for a job which started on Monday. The claimant said he would “let [him] know” after he talked with his wife. The claimant decided he did not want to come to work on Saturday, because he felt he had not been paid for other Saturdays he worked, but did not notify the employer of his decision. When he was no-call/no-show on October 7, 2006, the employer attempted to call him but he did not answer the phone. Finally a message was left on Mr. Diedrick’s voicemail that he was fired for being no-call/no-show and for causing trouble with other employees about wages.

The claimant acknowledged he had been asked by another employee what the employer’s policy was on wages and replied that Mr. Weiler did not give raises, but lowered wages instead. This was in reference to the pay scale which was on a per diem basis, and had been lowered

when the claimant was on light duty and could not perform the full range of job duties, but for which he was compensated in the final settlement. The claimant had asked to go on a hourly wage and the employer agreed, but Mr. Diedrick later decided he did not like the hourly arrangement and went back to the per diem.

Michael Diedrick has received unemployment benefits since filing a claim with an effective date of October 8, 2006.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised by the employer that he needed to call in when he was not going to be at work on a scheduled workday. Four days later he failed to notify the employer he would not be in as requested on Saturday, October 7, 2006. The administrative law judge acknowledges the claimant was under no obligation to work on Saturday, but he did tell the employer he would notify him one way or the other about the request to work that day. He did not do as he promised. He could provide no adequate explanation for failing to make a simple call to the employer and say he would not be in that day. This is insubordination as he had

been told he must call when he would not be in to work, and he had promised to let the employer know if he would work on Saturday. It left the employer without someone to do the loading job and no adequate opportunity to find a replacement. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 31, 2006, reference 01, is reversed. Michael Diedrick II is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,275.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/cs