

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JIMMY J RUSCO**  
Claimant

**APPEAL NO. 10A-UI-15987-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AREA XIV AGENCY OF AGING**  
Employer

**OC: 15987/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated November 17, 2010, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 14, 2011. Claimant participated. Employer participated by Steve Bolie, executive director, and Pam Stow, transit manager. The record consists of the testimony of Steve Bolie; the testimony of Pam Stow; and the testimony of Jimmy Rusco.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a non-profit agency that provides services to senior citizens in seven counties in southern Iowa. The claimant was hired on September 10, 2002. His last day of work was September 27, 2010. He was terminated on September 27, 2010. At the time of his termination, he was a driver.

The events that led to the claimant's termination began on or about September 13, 2010. A yellow lens on the light bus that had been driven by the claimant was discovered. The claimant and employer disagree on whether he reported the incident right away as required by the employer's handbook. There were several telephone conversations concerning the damage between the claimant and Pam Stow, the transit manager. The claimant was not entirely certain how the damage occurred and speculated it might have been due to a tree branch. The employer did not believe that the claimant gave consistent versions on what happened and that the observed damage on the truck did not seem to match the tree branch story. The claimant's written statement was not turned in until September 21, 2010.

Because of the perceived inconsistencies on the claimant's reports on how the accident happened and the employer's belief that he had not immediately reported the incident, the claimant was terminated on September 27, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

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.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

The evidence in this case established that the employer was dissatisfied with how the claimant reported damage to a bus he was driving and when he reported that damage. The claimant testified that he notified his dispatcher immediately. He admits he did not tell Ms. Stow. The employer was also suspicious about how the accident really occurred since the claimant appeared to give them different explanations and there was some inconsistent physical evidence.

The most reasonable inference from the evidence is that on or about September 13, 2010, the employer became aware of a broken light on a bus that had been driven by the claimant. The conversations with the claimant took place on September 13, 2010, and September 14, 2010. The claimant's written statement was September 21, 2010. The claimant, however, was not terminated until September 27, 2010, which was also his last day of work. Even assuming the claimant's actions are misconduct, the employer waited until September 27, 2010, to terminate his employment. By then, there was no longer a current act of misconduct, as the claimant continued to work following the accident.

The administrative law judge also does not believe the claimant's actions constitute misconduct. The claimant testified that he was not certain exactly how the accident occurred. Since it was minor damage and no one was injured, the claimant's uncertainty is understandable. The variations cited by employer are minor. While the employer certainly has a material interest in knowing promptly about any damage to its property, particularly when it is a bus used to transport senior citizens, the claimant's actions at best show poor judgment. This is not misconduct as that term is defined in Iowa law. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated November 17, 2010, reference 02, is affirmed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs