

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY W NUCKOLLS
Claimant

APPEAL NO. 12A-UI-15113-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRET BENSLEY
DC MUFFLER
Employer

OC: 11/25/12
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, DC Muffler Shop, filed an appeal from a decision dated December 18, 2012, reference 01. The decision allowed benefits to the claimant, Gary Nuckolls. After due notice was issued, a hearing was held by telephone conference call on January 28, 2013. The claimant participated on his own behalf. The employer participated by Owner Bret Bensley, and William Killam.

ISSUE:

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

FINDINGS OF FACT:

Gary Nuckolls was employed by DC Muffler from June 2004 until November 20, 2012 as a full-time auto technician. During the course of his employment he received a verbal warning in May 2011 because he had taken an excessively long lunch break and in May 2012, he had left tools inside a customer's vehicle which "flew out" and hit another vehicle on the road.

On November 13, 2012, the claimant was working on a customer's vehicle. It was picked up the next day and as it was being driven, a wheel came loose. When it was brought back to the shop Owner Bret Bensley examined it and found Mr. Nuckolls had failed to put a cotter pin in a ball joint and as a result a nut worked loose. When questioned, the claimant said he had "overlooked it."

The next week on November 20, 2012, the employer notified the claimant he was being discharged. He stated he needed time to consider everything before making a decision.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The above Administrative Code section requires there to be a current, final act of misconduct which precipitates the decision to discharge before disqualification may be imposed. In the present case Mr. Bensley waited a week before notifying the claimant he was fired. At no time prior to that had the employer told the claimant he was taking the matter of his continued employment under advisement and discharge could result.

It is possible the employer was waiting to hire a replacement before discharging the claimant. But in that case the decision to discharge on a particular date was for the convenience of the employer and not because of a current, final act of misconduct by the claimant.

The claimant was undoubtedly at fault for sloppy workmanship which endangered the safety of the customer's employee and the customer's equipment. But it was not a current, final act due

to the fact the employer waited a week without any specific reason being given for the delay. For that reason alone disqualification may not be imposed.

DECISION:

The representative's decision of December 18, 2012, reference 01, is affirmed. Gary Nuckolls is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css