

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MORRIS A NOBLE
Claimant

APPEAL NO: 13A-UI-00186-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELLER CONSTUCTION CO INC
Employer

**OC: 12/02/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated December 31, 2012, reference 01, that held the claimant was not discharged for misconduct on November 30, 2012, and benefits are allowed. A telephone hearing was held on February 6, 2013. The claimant participated. Rick and Sherri Eller, Owners, participated for the employer. Employer Exhibits 1 & 2 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on January 31, 2010, and last worked for the employer as a full-time salesman on November 30, 2012. He received the employer policy that includes standards of conduct.

The ownership received an employee report claimant was performing work for a competitor business and Rick Eller went to the job site on December 1 to check it out. The ownership had received some earlier reports claimant might have been doing side work.

Eller observed claimant wearing cement boots and backing a truck in order to pour concrete at the work site. He discharged claimant for doing work for a competitor business. Claimant explained he was helping a friend who was in a predicament and he was not paid for any work.

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on November 30, 2012.

The employer offered its code of conduct policy. It does not specifically prohibit employees from doing side jobs for other business. Claimant was a salesman. His presence at the job site had nothing to do with soliciting business away from his employer. While claimant should have cleared the matter with his employer he did not violate any policy. Job disqualifying misconduct is not established.

DECISION:

The department decision dated December 31, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct on December 1, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs