

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT C CARROLL
Claimant

APPEAL NO. 10A-UI-00926-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

EISMA EXPRESS INC
Employer

OC: 01/11/09
Claimant: Respondent (1)

Section 96.5-2-A -- Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated January 15, 2010, reference 04, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 23, 2010. The claimant did not respond to the hearing notice and did not participate. The employer provided a telephone number at which a representative was to be available. However, when the administrative law judge called that number at 10:32 a.m., voice mail picked up. A message was left for the employer that the record would remain open until 10:40 a.m. and the telephone numbers were given. The employer did not call until 11:02 a.m. The reason that the employer was not available was that he was in an area where cell service was not available. The administrative law judge explained that this was not good legal cause to reopen the record. The decision in this case is based on the agency file.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having reviewed the administrative record, makes the following findings of fact:

The claimant worked as a full-time truck driver for the employer. He was hired on September 21, 2009. The claimant was terminated by the employer after the employer found out that his insurance company would not accept the claimant as a driver. The termination date was November 7, 2009.

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.

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. The employer has the burden of proof to show misconduct.

The evidence in this case is scant due to the claimant's non-response to the hearing notice and the employer's failure to be available at the time of the hearing. The employer did not participate in the fact-finding interview. The claimant provided a statement. According to the claimant's statement, the employer was aware of the claimant's driving record when he was hired. The protest filed by the employer indicated that the claimant was involved in a labor dispute on October 23, 2009. It is not entirely clear what ticket or tickets might have led the insurance company to change its mind about insuring the claimant.

The employer had the burden of proof to show misconduct. There is insufficient evidence in this record to conclude that the claimant was discharged for misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated January 15, 2010, reference 04, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css