

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES R KOLLASCH
Claimant

APPEAL NO. 09A-UI-17263-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERIGAS PROPANE INC
Employer

**OC: 10/18/09
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated November 3, 2009, reference 02, that held he was discharged for misconduct on October 16, 2009, and benefits are denied. A telephone hearing was held on December 28, 2009. The claimant participated. Linda Van Gilder, Sales & Service Manager, participated for the employer. Official notice was taken of the claimant appeal documents, and Employer Exhibit One was received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant began full-time employment on January 20, 2006, and last worked for the employer as a full-time route driver on October 16, 2009. The employer has a policy that an employee driver who incurs three responsible accidents within a thirty-six month period is subject to termination. The employer issues a written warning to the employee-driver based on the employer vehicle and/or third-party damage for each accident.

The employer discharged the claimant on October 16, 2009 for violation of the three-accident within 36-month period policy. The claimant had an accident on June 25, 2007, but he denies responsibility. The claimant had a second accident on February 16, 2009 when he struck a fixed post in a Hy-Vee parking lot, and the employer paid third-party damages of \$1,140.00. The claimant rear-ended a vehicle while maneuvering in traffic on October 16 that caused about \$6,400.00 in damages to a third party. The claimant was not issued any citations for the accidents, and the claimant denies the employer issued any warnings for the first and second occurrences.

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 that the employer failed to establish misconduct in the discharge of the claimant on October 16, 2009.

Although the employer offered 24 pages of documents, there is no evidence of any written warning for the first or second accidents, and how the incidents triggered a violation of the employer policy. The claimant denied he was responsible for the first accident, and the employer witness could not offer the amount of any damage to the company vehicle or third party. Since the employer failed to properly warn the claimant he job was in jeopardy according to its policy, job disqualifying misconduct is not established.

DECISION:

The decision of the representative dated November 3, 2009, reference 02, is reversed. The claimant was not discharged for misconduct in connection with employment on October 16, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css