

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE M NIELSEN
Claimant

APPEAL NO. 13A-UI-05635-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEERY BROTHERS INC
Employer

OC: 04/21/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated May 9, 2013, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on June 18, 2013. Claimant participated. Participating as a witness for the claimant was Mr. Ryan Runyon, Former Co-Worker. The employer participated by Ms. Jackie Nolan, Hearing Representative, and witness: Mr. Ron Bennett, Fixed Operations Manager.

ISSUE:

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

FINDINGS OF FACT:

Shane Nielsen was employed by the captioned automobile dealership from June 25, 2012 until April 18, 2013 when he was discharged from employment. Mr. Nielsen was employed as a full-time shipping clerk and was paid by the hour. His immediate supervisor was Mike Heigt.

Mr. Nielsen was discharged from Deery Brothers, Inc. on April 18, 2013 when a company owner observed Mr. Nielsen in a customer waiting area and concluded that Mr. Nielsen was watching television instead of working.

The claimant had gone to the waiting area to get a drink of water and to quickly view whether a person appearing on the tv screen was a former employee. Mr. Nielsen had been told by another employee about the image on the tv and the claimant had quickly gone in to the area to observe it and had remained in the area for no more than 30 to 40 seconds before being observed by Brad Deery. Mr. Deery apparently concluded that Mr. Nielsen had been wasting excessive time in the area and instructed Mr. Nielsen to sit down and remain there. Mr. Deery then instructed Mr. Bennett to discharge Mr. Nielsen from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the testimony of the claimant and another witness who was present verify that Mr. Nielsen had not spent excessive time in the waiting area watching tv but that the claimant had only momentarily gone to the area to get a drink of water and quickly look at an image on the screen. While other company employees may have spent time in the waiting area watching tv because of a newsworthy event at the time, the claimant did not engage in this conduct but was discharged based upon the employer's belief that the claimant had spent a substantial period of time in the waiting area instead of performing his duties.

For the reasons stated herein, the administrative law judge concludes that the claimant's discharge from employment took place under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated May 9, 2013, reference 01, is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs