

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALE HOLST
Claimant

APPEAL NO. 07A-UI-06570-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEW HORIZON FS INC
Employer

**OC: 06/10/07 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Dale Holst (claimant) appealed an unemployment insurance decision dated June 27, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from New Horizon FS, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 19, 2007. The claimant participated in the hearing with John Thomas, Vice-President of the Board of Directors, and Wayne Grantz, former employee and general laborer. The employer participated through David Knudsen, Operations Manager, and Tom Salrin, General Manager. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed full-time in various positions in this farm cooperative from September 15, 1978 through June 8, 2007. He was most recently working as a sales support team leader for Clinton County. The claimant was discharged after a new employee reported to the employer that the claimant was guilty of three safety violations. The employer could not provide specific dates but stated the violations happened on various dates from the fall through the spring. The employee claimed that she was forced to run a floater, an extremely large piece of equipment that spreads dry fertilizer on fields, with no breaks. She claimed that she was required to fill ammonia tanks without having any training and that she was required to drive a Class B truck without a commercial driver's license. The claimant was discharged without notice and/or without warnings. In fact, he had never received any disciplinary warnings in his 28 years of employment with this company. The employee that made the allegations was later discharged for violation of the confidentiality agreement.

The claimant testified that the employee had voiced a complaint about the breaks of the floater and the claimant took action to remedy the situation. He put on new air breaks and worked with her on adjusting them. A co-employee testified that the floater did have breaks and he also tried to teach the employee how to adjust the breaks. The claimant testified that the employee attended a safety training on filling ammonia tanks and he personally worked with her in accomplishing this dangerous task. And finally, the claimant testified that the employee did initially drive without a commercial driver's license but he took her down to take her test and she failed it. The claimant arranged for the employee to go to the Welton facility to practice and she never showed up. She did not drive the Class B trucks after that.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but

the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer discharged a 28-year employee without warning based on three allegations of an employee who had only been there six months. The employer was unable to provide specific details and dates and its "investigation" merely included confronting the claimant with the allegations. The employer contends the claimant admitted the safety violations, which is not the case. It appears the employer lost a very good and dedicated employee, as evidenced by his long tenure with the employer, without any warnings. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated June 27, 2007, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw