

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LESLIE A BENCH**  
Claimant

**CNH AMERICA LLC**  
Employer

**APPEAL 15A-UI-06299-EC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/03/15**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the May 21, 2015, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on June 29, 2015. The claimant, Leslie Bench, participated, along with his attorney, Nicholas Pothitakis. The employer did not participate in the hearing.

**ISSUE:**

Was the separation from employment a discharge for misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a production welder from August 23, 2013, until this employment ended on May 3, 2015, when he was called into a meeting room and “let go” or discharged for violating his lifting restrictions.

The claimant injured his shoulder. He was restricted from lifting more than 15 pounds above his shoulder. His employer obtained surveillance video showing the claimant performing various tasks, which it apparently believed violated his lifting restriction. The claimant saw the surveillance video and described it on the record at this hearing. He was shown riding his Harley Davidson motorcycle, which does not involve lifting above his shoulder. He was shown swinging a 28 ounce hammer, which does not violate the 15-pound restriction. He was shown moving his mother’s chair, which does not involve lifting above his shoulder. He was shown building a 2 ½ foot tall fence for his mother, which does not involve lifting above his shoulder or lifting more than 15 pounds. The employer did not participate in the appeal hearing. No evidence of any misconduct was presented.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer did not meet its burden of proof to establish any act of disqualifying misconduct.

**DECISION:**

The May 21, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Emily Gould Chafa  
Administrative Law Judge

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Decision Dated and Mailed

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