

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOB H MCCLAIN
Claimant

APPEAL NO. 08A-UI-05055-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EAGLE WINDOW & DOOR LC
Employer

**OC: 03/09/08 R: 04
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge/Suspension

STATEMENT OF THE CASE:

The claimant, Bob McClain, filed an appeal from a decision dated May 19, 2008, reference 05. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 10, 2008. The claimant participated on his own behalf. The employer, Eagle Window and Door, participated by Human Resources Assistant Jennifer Shimon.

ISSUE:

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

FINDINGS OF FACT:

Bob McClain was employed by Eagle Window and Door from May 17, 1999 as a full-time inter-plant driver. During the course of his employment, he had received disciplinary action for insubordination and failing to follow instructions.

On April 18, 2008, Supervisor Denny Herbst gave the claimant instructions to move a truck from the Hodge building to the Eagle building. A quarter of an hour later Mr. Herbst witnessed the claimant complaining to another employee about the instructions. Approximately one hour later Mr. McClain argued with Mr. Herbst about why he had to use the other truck. When it was explained to him, he eventually did do the task as instructed.

The claimant was interviewed on April 21, 2008, by Human Resources Representative Janet Snoozy, Production Supervisor Larry Grant, Director of Customer Satisfaction Bill Lynch, and Mr. Herbst. The claimant did admit to the events and was suspended pending further investigation. The investigation concluded he had been insubordinate and was suspended a total of six days before being returned to work on April 29, 2008.

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.

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The claimant was on a disciplinary suspension which, under the provisions of the above Administrative Code section, must be determined under the same standard as discharge for misconduct. The claimant failed to perform his job as instructed by his supervisor. Apparently he felt the instructions were inappropriate when he complained to other employee. He had not performed the job after nearly an hour when he questioned the need for the task to Mr. Herbst. He was not being asked to do anything that was outside his regular job duties or anything that would endanger his health or safety. His refusal to perform the task as instructed in a timely manner is insubordination. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of May 19, 2008, reference 05, is affirmed. Bob McClain is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw