

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW L ROYBAL**  
Claimant

**APPEAL NO. 14A-UI-04820-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRAHAM TIRE OF MASON CITY INC**  
Employer

**OC: 04/13/14**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Graham Tire of Mason City (employer) appealed a representative's May 2, 2014, decision (reference 01) that concluded Matthew Roybal (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 29, 2014. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Justin Cooper, Service Advisor.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 23, 2014, as a full-time general service technician. The claimant signed for receipt of the employer's handbook on January 22, 2014. The employer issued the claimant two written warnings on February 20, 2014. One warning was for attendance issues and one was for failure to follow instructions. The employer notified the claimant that further infractions could result in termination from employment. On March 29, 2014, the employer issued the claimant a written warning for failure to follow instructions with regard to safety. Two witnesses notified the employer that the claimant was driving erratically. The claimant was speeding and cut off another driver. The employer notified the claimant that further infractions could result in termination from employment.

On April 10, 2014, the claimant did not follow proper safety procedures and put too much oil in a new vehicle. The vehicle returned to the employer with a damaged part. The part cost the employer about \$50.00 and additional costs for the labor. The customer's vehicle could have been damaged. The employer terminated the claimant on April 10, 2014.

The claimant filed for unemployment insurance benefits with an effective date of April 13, 2014. He received no benefits after the separation from employment. The employer participated personally at the fact-finding interview on May 1, 2014, by Sean Kuhl.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's May 2, 2014, decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible. The claimant has not received unemployment insurance benefits since his separation from employment and is, therefore, not overpaid unemployment insurance benefits.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/pjs