

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD E MURRAY
Claimant

APPEAL NO. 12A-UI-06799-VST

LINDA FROEHLICH
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/26/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated May 31, 2012, reference 01, which held that the claimant was eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 28, 2012. Claimant participated. The employer participated by Linda Froehlich, office manager. The record consists of the testimony of Linda Froehlich and the testimony of Chad Murray.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer does landscape architecture, design, and installation. The claimant was hired on April 23, 2012, as a full-time summer installer. The claimant's last day of work was May 9, 2012. He was terminated on May 11, 2012. He was terminated because the employer felt he had misrepresented his qualifications on his application. The claimant did not know how to operate a machine called a dingo. The claimant never told the employer he could operate this machine.

The employer is not a base period employer and has not been charged for any unemployment benefits paid to the claimant.

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The definition of misconduct specifically excludes unsatisfactory job performance due to incapacity or inability. The employer has the burden of proof to show misconduct.

There is no evidence of misconduct in this record. The claimant was terminated because the employer felt that he had misrepresented his abilities to operate certain machinery. The claimant credibly testified that he had never operated a machine called a dingo and never told

the employer he had this experience. The inability to operate a piece of machinery is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

The administrative law judge notes that this employer is not a base period employer and is not being charged for any unemployment benefits paid to the claimant at this time.

DECISION:

The decision of the representative dated May 31, 2012, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs