

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS R WALKER
Claimant

APPEAL NO. 13A-UI-04682-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALAN ENTERPRISES LTD
Employer

OC: 03/17/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the representative's decision dated April 12, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on May 21, 2013. The claimant participated personally. The employer participated by Alan Ellis, owner. The record consists of the testimony of Alan Ellis and the testimony of Dennis Walker.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer is a floor covering installation business. The claimant was hired on February 20, 2012, as a full-time installation helper. The claimant's last day of work was March 22, 2013. He was terminated on March 22, 2013.

The incident that led to the claimant's termination occurred on March 18, 2013, through March 21, 2013. The claimant was assisting an installer on a bathroom at a Council Bluffs hotel. The manager complained to the employer about how long the job was taking and asked that the claimant's crew not be assigned to the next job. The claimant was not informed about the manager's complaint. The claimant received a letter with his paycheck on March 22, 2013, that he was being terminated for lack of motivation. The employer also cited prior warnings, including use of a company truck for personal business.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes unsatisfactory job performance or negligence in isolated instances. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also *Greene v. EAB*, 426 N.W.2d 659 (Iowa App. 1988) The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The claimant was terminated because he took too long on a job in March 2013. The claimant's termination was due to job performance. There is no showing in this record that the claimant deliberately acted in such a way that the job did not get done in a timely manner. Unsatisfactory job performance, absent a showing of wanton carelessness, is not disqualifying misconduct. The employer may have had good business reasons to terminate the claimant but the evidence in this case does not establish misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The unemployment insurance decision dated April 12, 2013, reference 01, is affirmed. Benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs