

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PETE A CARICO**  
Claimant

**APPEAL NO. 14A-UI-08794-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELDER CORPORATION**  
Employer

**OC: 08/03/14**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 19, 2014 (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on September 11, 2014. The claimant did participate. The employer did participate through representatives Nicole Finely, Human Resources Manager, and Mike Shores, Field Coordinator and Dispatcher.

**ISSUE:**

Was the claimant discharged due to job-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a driver beginning on April 17, 2014 through August 4, 2014 when he was discharged. The claimant drove a dump truck that dumped the load to the side. The load was normally covered with a tarp that had to be removed before the load was dumped or it would be damaged. On July 21 the claimant forgot to remove the tarp resulting in damage to it that was approximately \$800.00 to repair. He was given a written warning for causing the damage. On July 31 the claimant again dumped a load without making sure the tarp was open. The damage was over \$1,200.00 dollars. The claimant was distracted by medical issues and tired and simply forgot for the second time in ten days to remove the tarp. The employer discharged the claimant because they considered him to be a safety risk and because he had been careless twice in ten days resulting in damage. The claimant was not discharged due to any attendance issue.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew how to properly remove the tarp to avoid damaging the equipment or injuring himself or others. Claimant's repeated failure to accurately perform his job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Benefits are denied.

**DECISION:**

The August 19, 2014 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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