

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN A MITCHELL**  
Claimant

**APPEAL NO. 08A-UI-03189-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY & RESEARCH CORP**  
**PER MAR SECURITY SERVICES**  
Employer

**OC: 02/17/08 R: 02**  
**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Per Mar, filed an appeal from a decision dated March 18, 2008, reference 02. The decision allowed benefits to the claimant, Brian Mitchell. After due notice was issued, a hearing was held by telephone conference call on April 15, 2008. The claimant provided a telephone number to the Appeals Section. That number was dialed at 11:00 a.m. and his spouse, Timber, stated he was not at home. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section prior to the close of the record. By the time the record was closed at 11:13 a.m., the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer participated by Operations Manager Carl Heille.

**ISSUE:**

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

**FINDINGS OF FACT:**

Brian Mitchell was employed by Per Mar from June 22 until September 27, 2008, as a full-time security officer stationed at a MidAmerican Energy facility working 4:00 p.m. until 4:00 a.m. At the time of hire, he received a copy of the employee handbook, which informs employees they are subject to discharge for use of client property for personal or non-work-related purposes.

On September 27, 2007, the claimant went off duty at 4:00 a.m. and discovered his car battery was dead, and so was the battery for his cell phone. He took a semi-tractor trailer belonging to the client and drove it to a convenience store where he used a phone to contact Supervisor Earl Pion. Mr. Pion drove to the client's site and found the claimant engaged in an argument with the driver to whom the truck had been assigned. Mr. Mitchell had not been able to get back in the gate and the driver was annoyed the truck had been taken. The claimant asked, "What was I to do? Stay here until 6:00 or 7:00 until someone showed up?" A supervisor would have checked up on him if he had not called in at the end of his shift in any event.

MidAmerican Energy filed a complaint with Per Mar about Mr. Mitchell taking the truck but did not press criminal charges. The claimant was discharged on September 27, 2007, by Operations Manager Carl Heille.

Brian Mitchell filed a claim for unemployment benefits with an effective date of February 17, 2008. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

The record was closed at 11:13 a.m. At 11:22 a.m., the claimant called in response to the message left. He stated he did not intend to claim any benefits.

### **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.

The claimant was discharged for violation of a known company rule. He took a client's property to run a personal errand, without authorization from anyone. It is unknown whether Mr. Mitchell was even licensed to drive a semi-tractor trailer. His conduct resulted in a complaint from the client, and could have even resulted in criminal charges. At the very least, it strained the business relationship between Per Mar and the client, and could have resulted in loss of the account. This is conduct not in the best interests of the employer and the claimant is disqualified.

**DECISION:**

The representative's decision of March 18, 2008, reference 02, is reversed. Brian Mitchell is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw