

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY A MEEK
Claimant

APPEAL NO. 11A-UI-14188-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOODWILL INDUSTRIES OF NE IA INC
Employer

OC: 10/02/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Larry Meek, filed an appeal from a decision dated October 21, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 28, 2011. The claimant participated on his own behalf. The employer, Goodwill, participated by Vice President of Human Resources Sharon Samec and was represented by TALX in the person of Tom Kuiper.

ISSUE:

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

FINDINGS OF FACT:

Larry Meek was employed by Goodwill from October 1, 2007 until September 15, 2011 as a full-time production worker. He received a copy of the employer's policies during the course of his employment. The company rules prohibit "recklessness" resulting in an accident and "horseplay" resulting high risk of serious injury. The progressive disciplinary policy calls for discharge after three written warnings, although steps may be skipped if the violation is deemed serious enough.

Mr. Meek received a written warning April 11, 2009, for a verbal confrontation with a co-worker which included foul language. The incident was overheard by a customer/donor and the warning included a period of suspension. The next warning on August 24, 2011, resulted in a five-day suspension. Mr. Meek had been operating a fork truck and was attempting to use the tines to lift a large overhead door in the building. This not the way in which the door was to be opened. The door was damaged and part of the sprinkler system was also damaged which resulted in water flooding the area and destroying 30 large boxes of merchandise.

On September 13, 2011, the claimant was dumping unusable items in a dumpster and a golf ball fell out. He took a golf club and swung and hit the ball. The ball struck the windshield of a

company truck and broke it. He reported the incident to a supervisor and it was investigated. He acknowledged hitting the golf ball and hitting the truck windshield and breaking it.

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 aware of the policies governing horseplay and recklessness. In spite of the warnings he damaged company property twice within one month due to unconsidered conduct while on duty. His only explanation was that he was "not thinking." The employer has the right to expect reasonable caution and behavior from all employees which the claimant did not exercise. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of October 21, 2011, reference 01, is affirmed. Larry Meek is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css