

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT T CARROLL**  
Claimant

**APPEAL NO. 11A-UI-03493-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLEMONS INC OF OTTUMWA**  
Employer

**OC: 02/13/11  
Claimant: Appellant (1)**

Section 96.5-2-A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated March 11, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 11, 2011. Claimant participated. Employer participated by Brandy Marcus, Sales Manager, and Dave Morris, Service Parts Director. The record consists of the testimony of Brandy Marcus; the testimony of Dave Morris; and the testimony of Robert Carroll.

**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 is an automobile dealer located in Ottumwa, Iowa. The claimant was hired on November 4, 2009, as a full-time service technician. The claimant's last day of work was February 14, 2011. He was terminated on February 14, 2011, for theft of company property.

The incident that led to the claimant's termination was discovered on February 12, 2011. Approximately one week earlier, a car had been purchased by the employer. An inventory was done of all of the equipment on the car. It had "subs" and an "amp." When the car was shown to a prospective buyer on February 12, 2011, the subs and amp were missing.

The service department was not open on Saturday. On Monday, February 14, 2011, Brandy Marcus and Dave Morris approached the claimant about the missing parts. The claimant said he took them out and that his son had taken them. The removal was not authorized by the employer. His son was also employed by the dealership. The claimant initially said that his son had taken only the subs and that the amp was in the parts room. When the parts room was checked, the amp was not there. The claimant's son had taken both parts.

Ms. Marcus asked the son about the parts and he had them. The son was terminated. The claimant was also terminated. The employer has a written policy that prohibits theft of company property and that termination can result.

### **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 occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed by an employee to his employer is honesty. An employer can reasonably expect that an employee will not misappropriate its property or take unauthorized action with respect to the employer's property. The employer has the burden of proof to establish misconduct.

The claimant denied at the hearing that he had removed the subs and amp from the car. He did admit that it was his son who had taken the parts. The difficulty with the claimant's testimony is that he initially told both Ms. Marcus and Mr. Morris that he had removed the subs and amp from the car. He testified at the hearing that it was another employee named Scott who actually took the parts out. He did not tell his employer about Scott until approximately four and one-half

hours after his termination. The employer talked to Scott and he denied that it was his ticket. Scott is a lube technician and would not have had any reason to remove the subs and amp.

The most reasonable inference from the evidence is that the claimant did remove the parts and knew that his son had taken the parts. He first said that his son had taken only the subs and that the amp was in the parts department. He claimed that he took out the parts and then said about four and one-half hours later that it was Scott who took out the parts. The claimant not only removed parts from a car without authorization, but he gave his employer several different versions of what occurred. The claimant breached his fundamental duty of honesty. Misconduct has been established. Benefits are denied.

**DECISION:**

The decision of the representative dated March 11, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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