

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER KOLLBAUM
Claimant

APPEAL NO: 13A-UI-04695-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIOUX CITY TRUCK SALES INC
Employer

OC: 03-24-13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 11, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 29, 2013. The claimant participated in the hearing. Mary Stubbs, Human Resources Manager; Rick Musselman, Assistant Service Manager; and Doug Schmidt, Service Manager; participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time mechanic for Sioux City Truck Sales from March 26, 2012 to March 22, 2013. He was discharged for repeated poor workmanship when he had the ability to perform the work correctly.

On July 11, 2012, the claimant received a written warning after he left an air bag loose in a vehicle because he did not tighten the bolts. It was a general maintenance repair as the customer brought the truck in for a broken spring which was attached to the air bag and frame. The customer took the truck and drove it with the air bag loose until it was discovered by another service center when the customer took his truck in to get new tires.

Shortly before March 11, 2013, the claimant had "two come back issues. Neither one of these come backs were of a technical repair" (Employer's Exhibit One). "One was for a Service Special oil change that you did. The o ring was out of place on the oil filter cap. The other was on...a Hinz Truck. On this repair you installed a left front drive air bag. The unit got out to Belvedere, NE, and the air bag lower stud fell out. The only way for the stud to fall out is if the stud was not put tight into the air bag and the lock nut securing the air bag to the mount was not

tight" (Employer's Exhibit One). The corrective action stated by the employer indicated the claimant needed to "think about what you are doing. Neither of these repairs needed any technical skills. Just need to think and be aware of what you were doing. Both of these mistakes cost Peterbilt of Des Moines money, let alone the loss of credibility we lost from the customer" (Employer's Exhibit One).

On March 11, 2013, the claimant did a repair on an air conditioner unit in a truck (Employer's Exhibit Two). He did so with the "A/C compressor while the old unit was on the tire" (Employer's Exhibit Two). Both air conditioner lines were hooked up to the condenser and by moving, pulling and twisting the lines, the claimant ruined the condenser. "The condenser had to be replaced at the shop expense" (Employer's Exhibit Two).

On March 13, 2013, the claimant installed a set of trailer air lines on the brakes. On March 15, 2013, the customer had to call for road service and have the air-lines on his brakes tightened. It was a very routine job and one of the easiest repairs the employer does. Service Manager Doug Schmidt was out of town that week and Assistant Service Manager Rick Musselman called him and they decided to issue a written warning to the claimant when Mr. Schmidt returned the following Monday.

On the morning of March 22, 2013, a customer came in to get his truck and found the driver's seat broken and twisted (Employer's Exhibit Three). The claimant made the repair to the windshield the day before and was required to sit in the driver's seat and push the windshield out with his feet (Employer's Exhibit Three). In doing so, one side of the driver's seat slid back and would no longer latch and stay upright (Employer's Exhibit Three). The claimant neglected to report the problem to the employer or the driver (Employer's Exhibit Three). The employer was forced to remove the driver's seat and replace it with the passenger seat, which was very inconvenient for the customer, and it cost the employer time and money to repair the seat.

After Mr. Schmidt returned from vacation he and Mr. Musselman decide to terminate the claimant's employment for poor workmanship (Employer's Exhibits Two and Three).

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 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 making errors on very basic, routine tasks. He failed to correctly place the o-ring on the oil filter cap on an oil change and on another job he installed a left front drive air bag and after the customer got to Nebraska the air bag lower stud fell out, which indicated the stud was not put tightly into the air bag and the lock nut securing the air bag to the mount was not right. He damaged an air conditioner compressor by leaving the old compressor on the tire and the condenser had to be replaced at the shop's expense. The final straw for the employer occurred when the claimant broke a driver's seat when sitting in it to push the windshield needing repair out. The seat would no longer latch or stay upright and while the claimant stated it worked fine for him the customer and the employer immediately noticed the damage, which the claimant failed to report. The claimant's errors were not made due to a lack of experience or training as they were very basic tasks. Tightening bolts, making sure the o-ring was in place on the oil filter cap, being aware of where he placed the condenser, and failing to report significant damage he did to a driver's seat when pushing the windshield out with his feet, for example, did not require a great deal of mechanical knowledge but were instead very routine, common sense aspects of the job. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The April 11, 2013, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs