

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY W FINNESTAD
Claimant

APPEAL NO. 07A-UI-04354-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GKN ARMSTRONG WHEELS INC
Employer

**OC: 03/25/07 R: 01
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Rodney Finnestad, filed an appeal from a decision dated April 20, 2007, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on May 15, 2007. The claimant participated on his own behalf. The employer, GKN Armstrong Wheels, Inc. (GKN), participated by Human Resources Supervisor Michelle Nickelson.

ISSUE:

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

FINDINGS OF FACT:

Rodney Finnestad was employed by GKN from March 27, 2006 until March 23, 2007, as a full-time general laborer. He filled out an application for employment and one of the questions asked whether he had ever been convicted of a felony, and he answered “no.” At the time he had already been charged with delivery of a controlled substance but there had been no disposition of the case.

On March 23, 2007, Mr. Finnestad notified Human Resources Supervisor Michelle Nickelson he had been convicted of the felony the week before. Under the employer’s policies, conviction of a felony is awarded 13 points, which is the level at which an employee may be discharged.

The claimant’s felony had occurred prior to his employment and was not connected in any way with GKN, but the policy does not distinguish between the nature of any felony. He was discharged by Ms. Nickelson on March 23, 2007.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the only "misconduct" was being convicted of a felony which occurred prior to his employment and was not in any way related to his duties with GKN, nor did it occur on company property or while he was "on the clock." While Kleidosty v. EAB, 482 N.W.2d 416 (Iowa 1992) does allow for discharge of an employee who is convicted of a crime, in that case the crime occurred while the claimant was employed by the company which discharged her. As that is not the case in the present circumstances, and the claimant did not falsify his work application, the judge cannot conclude there was substantial, job-related misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of April 20, 2007, reference 03, is reversed. Rodney Finnestad is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs