

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TERRY J HAINLINE
813 CLINTON AVE
OTTUMWA IA 52501

CARRIKER FORD INC
1201 S 17TH ST
OSKALOOSA IA 52577

Appeal Number: 04A-UI-06397-HT
OC: 05/16/04 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Terry Hainline, filed an appeal from a decision dated June 1, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 7, 2004. The claimant participated on his own behalf. The employer, Carriker Ford, Inc. (Carriker), participated by Service Manager Mike Spilman.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Terry Hainline was employed by Carriker from

August 21, 1998 until February 24, 2004 as a full-time senior technician. During the course of his employment, Mr. Hainline received a copy of the employee handbook which sets out the employer's policies. One policy notifies state that discharge may occur if an employee is convicted of an offense which reflects negatively on the company.

The claimant was a member of the National Guard and was called to active duty in November 2003. In early January 2004, an officer of the guard informally notified Service Manager Mike Spilman that the claimant would not likely be deployed. In March 2004, the claimant approached Mr. Spilman and asked for a letter of character reference because he was facing criminal charges in Dallas County, Iowa. Mr. Hainline intimated the offense was getting into an altercation with a minor. The letter was written but, shortly thereafter, a communication was received from one of the parties in the criminal action which put the employer on notice the offense was not merely a physical altercation.

A check of the Dallas County, Iowa, court records revealed the claimant had been convicted for indecent exposure involving a minor. He was sentenced to 30 days in jail. When he returned to work on May 18, 2004, he was discharged by Owner Todd Carricker and Mr. Spilman for violation of the policy.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant was discharged for conduct not in the best interest of the employer. He was convicted of an offense of indecency which would reflect poorly on the dealership. Kleidosty v. EAB, 482 N.W.2d 416 (Iowa 1992) does provide for discharge and disqualification for off-duty conduct if such offenses are stated in the employee handbook. The administrative law judge concludes the claimant violated the clear provisions of the employer's policy and he is disqualified.

DECISION:

The representative's decision of June 1, 2004, reference 01, is affirmed. Terry Hainline is disqualified, and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/tjc