

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT BAUER
Claimant

APPEAL NO. 10A-UI-13486-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY'S TRUCKING INC
Employer

OC: 09/05/10
Claimant: Appellant (2)

Section 96.5-2-A – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 29, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 9, 2010. Claimant participated. Employer participated by Pat Murphy, President. The record consists of the testimony of Pat Murphy; the testimony of Robert Bauer; and Claimant's Exhibits A-E.

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 a trucking company. The claimant's most recent date of hire was May 14, 2009. The claimant was a truck driver and did local hauling for the employer. He was a full-time employee. His last day of work was August 30, 2010. He was terminated on August 30, 2010.

The claimant came to work on August 30, 2010, and was dispatched to a business called Artco. This business is approximately one mile from the employer's yard. The claimant finished up at Artco and was told to come back to the yard. The claimant was not feeling well and left in his personal vehicle to go to Wal-Mart to buy some Pepto-Bismol. The claimant forgot his wallet and returned to the yard to retrieve it. He had another conversation with his dispatcher and informed the dispatcher that he was sick and was going home.

The claimant was not aware that he had been scheduled for a random drug screen on August 30, 2010. The employer terminated the claimant because he failed to have the drug screen done.

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 is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The employer terminated the claimant because the claimant failed to have a drug screen done on August 30, 2010. The claimant did not know he was supposed to take a drug screen that day. He was sick and informed his dispatcher that he had to go home because he was sick. Although the refusal to take a drug screen may well constitute misconduct, the claimant's alleged failure cannot be misconduct if he did not know he was supposed to take a drug test.

The greater weight of the evidence shows that the Mr. Murphy was angry because the claimant left the yard without approval when he went to Wal-Mart and when he went home. The claimant testified that he informed his dispatcher that he was sick and was going home. This appears to be the real reason for termination, not the failure to take a drug screen. The claimant could have reasonably believed he told his dispatcher that he was sick and going home. There is insufficient evidence in this record

DECISION:

The decision of the representative dated September 29, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css