

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRAVIS N SCHMITT**  
Claimant

**APPEAL NO. 13A-UI-10520-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE STAMPING & MFG INC**  
Employer

**OC: 08/11/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated September 5, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on October 24, 2013. The claimant participated personally. The claimant was represented by Zeke McCartney, attorney at law. The employer participated by Dave Spahn, president Matt Spahn, production manager; Darold Vickerman, controller; Amy Weidenbacher, human resources. The employer was represented by Jason Lehman, attorney at law. Employer's Exhibits 1-20 were received into evidence.

**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 metal stamping firm located in Dubuque, Iowa. The claimant's date of hire was February 9, 2011. He did a wide variety of production jobs for the employer. His last day of work was July 19, 2013. He was terminated on July 25, 2013.

The series of events that led to the claimant's termination occurred on June 25, 2013, when he suffered a shoulder strain to his right shoulder. This was a work-related injury. As a result of that injury, the claimant was placed on certain restrictions such as no lifting or carrying over five pounds. He was to avoid repetitive action with his right arm. Pushing and pulling were also restricted. The restrictions applied both to on-the-job activities and activities while off the job. Nothing was said initially about whether the claimant could ride his motorcycle.

The claimant was observed driving a stick shift vehicle and power washing his truck. The employer believed that these activities violated the restrictions. A meeting was held with the employer on July 2, 2013. The claimant was reminded that his restrictions applied both to work and non-work activities. The claimant was told that any further violations could lead to termination.

On July 20, 2013, the claimant was observed riding a motorcycle. The activity was seen by Matt Spahn, production manager. The physician's reports prior to July 20, 2013, did not mention anything about motorcycle riding. The claimant assumed that he could ride his motorcycle. The employer asked the claimant about the motorcycle riding on July 22, 2013. The claimant said this had been okayed by the doctor. The claimant was suspended. The employer got in touch with Jill Hunt, M.D., who had been treating the claimant for his work injury. She stated as follows:

I saw Mr. Schmitt in my office on 7/16/2013. He reported his right arm felt most comfortable when he was on his motorcycle with Ape handlebars because it holds his arm in a higher position. I did not give him specific instructions regarding riding his motorcycle at that time. After further consideration and communication with Dr. Kim, I agree he should now have the added restriction of no motorcycle driving due to the strain it may place on his shoulder.  
(Exhibit 2)

The employer decided to terminate the claimant for insubordination and dishonesty. The date of termination was July 25, 2013.

#### **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 disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990) Failure to perform a specific task does not constitute misconduct if the failure is in good faith or for good cause. See Woods v. IDJS, 327 N.W.2d 768 (Iowa App. 1982) The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. There is no evidence in this case that the claimant was forbidden to ride his motorcycle until the letter came from Dr. Jill Hunt on July 24, 2013. (Exhibit 2) She admitted that she had not given the claimant any specific instructions about riding the bike even though he had told her that his arm felt most comfortable while on the motorcycle. The claimant could have reasonably assumed that riding the bike was fine with Dr. Hunt. Dr. Hunt clarified her position AFTER the employer quizzed her about the situation. There is no evidence that the claimant had been steadily riding the bike or that riding the bike had made the injury worse in some way. The administrative law judge concludes that the decision to ride the bike was at best an act of poor judgment or discretion in an isolated instance. This is not misconduct. The administrative law judge also believes that the claimant did not intentionally lie to the employer on what Dr. Hunt said to him. There is simply not enough evidence in this record to show misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated September 5, 2013, reference 01, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs