

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL J HEACOCK
Claimant

APPEAL NO. 07A-UI-00581-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAN KRUSE PONTIAC INC
Employer

OC: 12/17/06 R: 04
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 11, 2007, reference 01, decision that denied benefits based upon his separation from Dan Kruse Pontiac Inc. After due notice was issued, a telephone conference hearing was held on January 31, 2007. Claimant participated personally. Appearing as a witness was Dave Demoss, former body shop manager. Appearing on behalf of the claimant was Wayne Laufenberg, union representative. Although notified, the employer did not participate.

ISSUE:

The issue is whether the claimant was discharged from employment for misconduct in connection with his work.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Mr. Heacock was employed with Dan Kruse Pontiac Inc. from May 1988 until December 11, 2006, when he was discharged. The claimant held the position of auto body technician.

When the claimant was discharged, it was alleged that he had “stolen from the company” by allowing a vendor to purchase discarded used headlights and utilizing the proceeds for the benefit of shop employees in a “pizza fund.” Although Mr. Heacock specifically indicated that the practice had been long standing and had been previously approved by management, he nevertheless was discharged. The claimant believes his discharge was related to a dispute regarding another worker, during which Mr. Heacock had sided with union representation. Prior to being discharged, the claimant had not been warned or counseled and reasonably believed the practice had been condoned by the company.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment after being involved on the side of union representation in a pay dispute regarding another employee. At the time of discharge it was alleged that the claimant had “stolen from the company” by allowing a vendor to purchase discarded used automobile headlights and utilizing the proceeds in the benefit of shop employees in a “pizza fund.” The evidence establishes that the

practice had been long standing and that company management was aware of the practice and had condoned it for a substantial number of years. When new purchases took over ownership of the dealership, they informed the employees that all current practices would continue. Although the claimant acted reasonably in attempting to explain the circumstances regarding the sale of otherwise useless automobile headlights, he was nonetheless discharged.

Although the employer bears the burden of proof in disqualifying of misconduct in connection with a discharge, the employer declined to participate during the hearing of this matter.

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.

For reasons stated herein, the administrative law judge concludes that misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The January 11, 2007, reference 01, representative's decision is hereby reversed. Mr. Heacock was discharged under non-disqualifying conditions. Benefits are allowed, providing that he satisfies all other conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/kjw