

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GARY E GIBSON**  
Claimant

**APPEAL NO. 08A-UI-08792-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TENCO INDUSTRIES INC**  
Employer

**OC: 07/27/08 R: 03  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Gary Gibson (claimant) appealed a representative's September 23, 2008 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Tenco Industries (employer) for failure to follow instructions in the performance of his job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 16, 2008. The claimant participated personally. The employer participated by Joanie Lundy, Human Resources Coordinator.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 13, 2006, as a part-time can redemption worker. The employer required workers to have a high school diploma or equivalent. The claimant indicated at the time of hire that he had a high school diploma or equivalent. In November 2007, federal government mandated that employers who require a high school diploma or equivalent to enforce the policy by having employees provide copies of the diploma or certificate.

On January 13, 2008, the employer told the claimant in a memo that he had to provide proof. The employer told him again on May 20, 2008. The employer said the claimant had to provide proof by June 16, 2008. The claimant was in Okinawa awaiting shipment to Viet Nam when his sergeant said he could earn his certificate. The claimant took the test but was not given a certificate. The claimant could not find any evidence of the testing in his military file. The employer terminated the claimant on June 23, 2008, for not providing the claimant's certificate.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct at the hearing. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's September 23, 2008 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs