

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID SORENSON
Claimant

APPEAL NO. 10A-UI-15731-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASPLUNDH TREE EXPERT CO
Employer

OC: 09/12/10
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

David Sorenson (claimant) appealed an unemployment insurance decision dated November 9, 2010, reference 02, which held that he was not eligible for unemployment insurance benefits because he was discharged from employment with Asplundh Tree Expert Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 30, 2010. The claimant participated in the hearing. The employer participated through Supervisor Adam Larson and Foreman Jim Black. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time tree trimmer apprentice from January 18, 2010 through September 16, 2010. He was hired conditionally upon obtaining a commercial driver's license (CDL) and a chemical applicator's license in the state of Iowa. The employer hires union employees and is bound by the union contract.

According to the union contract, a new employee shall be given three 90-day periods in which to obtain these licenses, provided he can show he has made an effort to do so. The claimant was nearing the end of his third 90-day period and had not obtained the required licenses. Consequently, he was discharged on September 16, 2010. He claimed he passed the written part of the CDL but had to drive and could not get a truck to drive, but the employer provides trucks for its employees to take the test so was unsure why the claimant could not get that arranged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on September 16, 2010 for failing to obtain the required CDL license and the chemical applicator license. He was given close to nine months to obtain these licenses but failed to do so, even knowing that his employment would be terminated if he did not have them. The claimant's failure to obtain the required licenses shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated November 9, 2010, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw