

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JERYL C WATSON**  
Claimant

**APPEAL NO. 14A-UI-12243-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
Employer

**OC: 10/12/14**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated November 6, 2014 (reference 02) which denied unemployment insurance benefits, finding that he was discharged from work on October 10, 2014 for violation of a known company rule. After due notice was provided, a telephone hearing was held on December 16, 2014. Claimant participated. The employer participated by Ms. Marcy Schneider, Hearing Representative, and witnesses Teresa Pekolste, Human Resource Manager, and Vicky Hernandez, former Direct Support Manager. Employer's Exhibits A through L were admitted into evidence.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Jeryl Watson was employed by Mosaic from May 28, 1998 until October 10, 2013 when he was discharged from employment. Mr. Watson was most recently employed as a full-time direct support associate, providing assistance to individuals with intellectual disabilities in a group home setting. The claimant was paid by the hour; his immediate supervisor was Vicky Hernandez.

Mr. Watson was discharged on October 10, 2013 for failure to comply with Mosaic's policy requiring direct support associates to verify company vehicles are locked by personal inspection.

Because of a previous incident in which an intellectually disabled individual had climbed into a company van that had been unlocked, the employer mandated that all employees not only attempt to lock all company vans near residential homes but also personally that all doors are locked by personal inspection. All company employees were notified of the policy change on September 13, 2013 and specific training was given to employees on September 24 and October 4, 2014 about the policy and requirement that doors be personally checked to ensure that they are locked. Mr. Watson was made aware of the policy and attended the training.

On October 4, 2013 Mr. Watson failed to ensure that the doors were locked on a Mosaic van parked adjacent to the group home where he was working and on the morning of October 8, 2014 Mr. Watson was issued a warning by the company and reminded that he must personally ensure that all doors were locked on company vans in the future.

A decision was made to terminate Mr. Watson from his employment when Ms. Hernandez, the claimant's supervisor, discovered at approximately 3:00 p.m. on October 8, 2013 that Mr. Watson had again failed to ensure that all van doors were locked and had left two doors unlocked on the Mosaic van that he had been using. It was determined that Mr. Watson was the last driver of the van in question. When questioned about the matter by his supervisors, Mr. Watson stated that he had used only the key fob and "that was enough." Based upon the claimant's failure to follow the company rule, after being warned on the same day, a decision was made to terminate Mr. Watson from his employment.

It is the claimant's position that his discharge from employment was related solely because the employer chose to discriminate against him because he had been off work for an extended period of time and had suffered the loss of a foot because of diabetes. The claimant also asserts that his supervisor had also been warned about failure to follow the door locking policy, but had not been discharged.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

In discharge cases, the employer has the burden of proof to establish disqualifying conduct. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the evidence establishes that Mr. Watson was aware of the Mosaic rule that had been put in place for the safety of residents. Mr. Watson was aware that the rule required that support personnel not only make an attempt to lock all Mosaic vehicles near group homes, but that they also personally check each door to ensure that all doors on each vehicle are locked and secure from entry. In addition to the rule itself being disseminated by the employer, training sessions were held and Mr. Watson attended those sessions. The claimant was further reminded of the rule on the morning of October 8, 2013 when he was specifically warned for his failure to follow the rule four days previously. The evidence in the record establishes that although the claimant had been reasonably notified of the rule and the necessity of following it, Mr. Watson did not do so and failed to personally check each door on the van as required; resulting in the van being left unsecured on October 8, 2013 which resulted in the claimant's termination from employment.

The administrative law judge concludes that the employer was equally applying its rule because the claimant's supervisor had also been warned when she had failed to follow the rule. The supervisor had not been discharged because she had not again violated the rule; however it appears that the claimant's supervisor may have suffered a disciplinary demotion. The administrative law judge also concludes that the evidence in the record does not establish that the claimant was discharged for any other reason than his failure to follow a known company rule after being warned. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he is otherwise eligible.

**DECISION:**

The representative's decision dated November 6, 2014 (reference 02) is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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