

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D ROWLAND
Claimant

APPEAL NO. 09A-UI-00833-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-LERT
Employer

OC: 04/27/08 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michael Rowland (claimant) appealed a representative's January 13, 2009 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with A-Lert (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 February 4, 2009. The claimant was represented by Derek Johnson, Attorney at Law, and participated personally. The employer participated by Julie Sumner, Employee Services Assistant.

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 October 21, 2008, as a full-time welder. The claimant signed for receipt of the employer's handbook on October 26, 2008. The claimant's car broke down on a Friday after work. The claimant notified the employer on the following Monday that he needed a replacement beeper. The employer told him that one would be issued but the employer never issued him one. On November 7, 2008, the claimant used an open-end wrench as a cheater bar because the employer did not provide the proper tools for the job. On November 7, 2008, the employer issued the claimant a written warning for that safety violation.

On November 11, 2008, the claimant gave a co-worker a ride home. Unbeknownst to him the co-worker took his safety goggles and hardhat from the car. The co-worker telephoned the claimant and said he would meet the claimant at the guard shack at 5:30 a.m. to give him his items. The claimant waited until 6:00 a.m., the start of his shift, but the co-worker did not appear. The claimant borrowed a hardhat and goggles and began working. At 6:30 a.m. the claimant was called into the office. There he saw his co-worker, his goggles and his hardhat. The employer told the claimant that he was not meeting the employer's expectations and was "let go".

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). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 13, 2009 decision (reference 02) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs