

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK J KUDLA**  
Claimant

**APPEAL NO. 13A-UI-04482-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINGER CONTRACTING CO**  
Employer

**OC: 05/20/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Mark Kudla filed a timely appeal from a representative's decision dated April 5, 2013, reference 02, which denied unemployment insurance benefits finding that he was discharged from work for violation of a known company rule. After due notice was provided, a hearing was held in Ottumwa, Iowa on July 23, 2013. Mark Kudla participated personally. Participating as his representative was Mr. Michael Kudla. Although duly notified, the employer elected not to participate in the hearing.

**ISSUE:**

The issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Mark Kudla was employed by Winger Contracting Company from August 2012 until March 14, 2013 when he was discharged from employment. Mr. Kudla was employed as a full-time helper/runner and was paid by the hour. His immediate supervisor was Mr. Dave Strunk.

Mr. Kudla was discharged on March 14, 2013 after it was alleged to the company that Mr. Kudla had violated a safety rule by not wearing a seatbelt as he exited the Cargill facility near Fort Dodge that day. It appears that a security guard believed that Mr. Kudla was not wearing his seatbelt as required and alerted another individual who was employed by the company that was standing some distance away. That individual in turn reported to the claimant's supervisor, Mr. Strunk, that the claimant had violated the company safety rule and a decision was made to terminate Mr. Kudla at that time.

Subsequently, Mr. Kudla was called to the company's offices when he was informed of his termination. The discharge papers had been prepared in advance and Mr. Kudla was not given the opportunity to provide a statement about the matter to his employer.

Mr. Kudla was aware of the seatbelt rule that was in effect at the Cargill location near Fort Dodge as the subject had been covered in a general meeting of all employees. Mr. Kudla had not been personally or specifically warned about the rule prior to his discharge. Mr. Kudla was aware of the rule and followed the rule when operating any type of motor vehicle on the job site location.

It is the claimant's position that he did not violate the rule. Mr. Kudla asserts that the seatbelt may have been only momentarily unattached while he was stopped and was in the process of removing his billfold from his hip pocket which necessitated the necessary removal of the safety belt. Mr. Kudla immediately re-attached the safety belt before any movement of the vehicle he was operating took place. Prior to the incident in question, the claimant had not been warned or counseled about any failure to follow work directives.

### **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 not.

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 job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not always serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be “substantial.” When based upon carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

In the case at hand, Mr. Kudla appeared personally and testified under oath that he did not intentionally violate the safety rule in effect at the Cargill work location near Fort Dodge, Iowa. Mr. Kudla testified that it was his practice to always wear a seatbelt while operating a moving vehicle at the job site and that he was aware of the rule. Claimant further testified that the only possibility that could have led to the employer’s belief that he was violating the rule was the fact that he may have momentarily removed the belt while extracting his wallet to swipe through the security gate. The claimant testified that he immediately re-attached the belt before commencing operation and movement of the vehicle and had only removed the belt momentarily for the purpose of obtaining the necessary card from his billfold to go through the company gate.

The administrative law judge finds the claimant to be a credible witness and finds that his testimony is not inherently improbable. The administrative law judge thus concludes that the claimant was not in willful violation of the employer’s policies or the policies of its client and, therefore, the claimant’s discharge took place under non disqualifying conditions. Unemployment insurance benefits are allowed, providing Mr. Kudla is otherwise eligible.

**DECISION:**

The representative’s decision dated April 5, 2013, reference 02, is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs