

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW A THOMAS
Claimant

APPEAL NO. 14A-UI-00694-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

CNH AMERICA LLC
Employer

OC: 12/08/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 13, 2014, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued an in-person hearing was held on March 27, 2014 at Burlington, Iowa. Claimant participated. Employer did not participate but did submit documents that were entered and received into the record as Employer's Exhibit 1. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a test technician/operator beginning on July 25, 2011 through December 5, 2013 when he was discharged. The employer crosses land owned by the Wischmeier family to get to land owned by them for use in testing. Kevin Wischmeier is an employee of the employer but not the owner of the land in question. Mr. Wischmeier was the claimant's supervisor in September 2013 when he specifically instructed the claimant to go onto Wischmeier land and to clear a new path on the land owned by the employer. The claimant did not undertake the task on his own initiative but only when told to do so by Mr. Wischmeier. No one from the employer appeared for the hearing to dispute the sworn testimony of the claimant.

The claimant had no prior discipline for any behavior. On December 5, 2013 the human resources manager called the claimant and told him that he was being discharged. The claimant told the employer repeatedly that he was only acting on instructions from Mr. Wischmeier but was told that the decision had already been made. The claimant did not decide on his own to clear the property, he was specifically told to do so by Mr. Wischmeier. In fact, Mr. Wischmeier had to unlock the gates to the Wischmeier property so that the claimant could gain access to the area. The claimant is being held responsible for following his direct supervisor's instructions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 of proof in establishing disqualifying job 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 claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job -related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The administrative law judge is persuaded that Mr. Wischmeier instructed the claimant to clear the land and made it possible for the claimant to gain access to the area. Under these

circumstances the claimant has not committed any misconduct. The employer has not established any prior warning for any similar situation. Thus, the employer has not met their burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The January 13, 2014, (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css