

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS A RUBY

Claimant

APPEAL NO. 14A-UI-03805-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIOUX CITY FOUNDRY COMPANY

Employer

OC: 03/16/14

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Douglas Ruby (claimant) appealed a representative's April 4, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Sioux City Company (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 29, 2014. The claimant participated personally. The employer participated by Valerie Corbin, Director of Human Resources.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 March 25, 2013, as a full-time truck driver. The claimant signed for receipt of the employer's handbook on March 25, 2013. The employer has a policy stating a driver must provide any citation or warnings to the employer within twenty-four hours. The employer did not issue the claimant any warnings during his employment.

On February 3, 2014, the Iowa State Patrol issued the claimant a warning citation for "unsafe approach to certain stationary vehicles". The claimant forgot about the citation until March 7, 2014, when he provided it to the employer. The employer was planning to give the claimant a written warning. On March 18, 2014, the claimant was driving when he cut off a pickup truck driver. The pickup truck started honking his horn at the claimant and the claimant waved his hand at the pickup driver. The driver called the employer and reported the claimant for cutting him off and waving his hand in an obscene gesture at the driver. When the claimant returned to the employer on March 18, 2014, the employer terminated the claimant. The claimant denied making an obscene gesture.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was 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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant failed to follow instructions when he drove unsafely on February 3, 2014, when he failed to give the employer the warning citation within twenty-four hours, and when he cut off the driver on March 18, 2014. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's April 4, 2014, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs