

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN SWAIM

Claimant

APPEAL NO: 11A-UI-08870-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FISHER CONTROLS INTERNATIONAL LLC

Employer

OC: 06/05/11

Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 30, 2011, reference 01, that held the claimant was not discharged for misconduct on June 8, 2011, and benefits are allowed. A telephone hearing was held on August 8, 2011. The claimant participated. Teresa Webster, HR Director, Denis Albright, HR Manager, Chip Uhde, Facilities/Maintenance Manager, and Joe Wauters, 2nd Shift Maintenance Supervisor, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on June 13, 2005, and last worked for the employer as a full-time utility operator on June 8, 2011. He received the employer policies in an employee handbook. The policy emphasizes the protection of company assets. Employees are not to use company vehicles for personal use, and are to get supervisor permission when leaving the premises.

On June 7, the claimant left in a company identified pick-up to get ice cream for some fellow employees. He did not seek supervisor permission. He arrived too late to get the ice cream, and returned to the plant empty handed. Someone reported claimant using the truck, and Supervisor Wauters was waiting for him when he returned.

Claimant admitted he did not have supervisor permission to use the truck, and he said he was sorry. He had received training about using a company vehicle, and he had done so on prior occasions with permission or in the presence of a trainer. There had never been an instance where he used a company vehicle without supervisor permission in the past.

The employer discharged claimant for violation of the employer policy on June 8. Although claimant has grieved his discharge, the matter is pending as of the date of this hearing. Claimant has been receiving unemployment benefits on his current claim.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has established claimant was discharged for misconduct in connection with employment on June 8, 2011, for violation of company policy.

The employer policy regarding protection of assets and use of company vehicles establishes the standard of required behavior the employer has a right to expect. Claimant had received training on the policy, and he knew that he was not to leave the premises with a company truck without supervisor permission, as he had used vehicles on prior occasions, and had not done so.

Using a company identified truck and leaving the premises without supervisor permission is a knowing violation of company policy that does constitute job disqualifying misconduct. There was no employer business purpose for using the truck that could justify this action.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has received unemployment benefits, the overpayment issue is remanded to claims for a decision.

DECISION:

The department decision dated June 30, 2011, reference 01, is reversed. The claimant was discharged for misconduct on June 8, 2011. Benefits are denied until the claimant requalifies by

working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs