

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAMERON M PENDLETON
Claimant

APPEAL NO. 09A-UI-03745-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANNETT HOLDINGS INC
Employer

OC: 01/18/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Annett Holdings, filed an appeal from a decision dated February 25, 2009, reference 01. The decision allowed benefits to the claimant, Cameron Pendleton. After due notice was issued a hearing was held by telephone conference call on April 2, 2009. The claimant participated on his own behalf. The employer participated by Operations Manager Lukas Rold and was represented by TALX in the person of Bill Stasek.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Cameron Pendleton was employed by Annett Holdings from September 28, 2007 until January 15, 2009 as a full-time over-the-road truck driver. He received a copy of the employee handbook which sets out the employer's policies regarding the reporting of accidents.

The claimant received three verbal warnings in 2008 about "high idle time" where the truck had been sitting with the engine on for excessive periods of time. He was counseled about an incident in August 2008 where a light pole had been knocked over at a customer's property, causing a power outage. The claimant took pictures of the incident and claimed he had been exonerated when the situation was reviewed.

Mr. Pendleton was in the Joplin, Missouri, terminal for some work to the electrical system on his tractor. The shop discovered serious damage including a bent rock guard, smashed center cab guard door and scratches to the sleeper and fender. These were reported to the terminal manager who reported it to Operations Manager Lukas Rold. The claimant was summoned to the office and discharged by Mr. Rold over the phone.

The claimant does not deny the damages or that he failed to take pictures of the damage, report it to the safety administrator or fill out the necessary paperwork required for such damage.

Cameron Pendleton has received unemployment benefits since filing a claim with an effective date of January 18, 2009.

REASONING AND CONCLUSIONS OF LAW:

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 claimant was aware of the required steps to take to report damage to the company vehicles. He did not follow these steps to report the scratches, smashed door or bent rock guard. No pictures were taken, no report made to the safety administrator and no written report was filled out and submitted. The claimant did not provide any explanation for failing to take these required steps. The employer needs to know of any damage to its vehicles so proper inspections and repairs can be made as necessary. The claimant's conduct interfered with its ability to maintain its equipment. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 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.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of February 25, 2009, reference 01, is reversed. Cameron Pendleton is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs