

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GARY BUELT**  
Claimant

**APPEAL NO. 14A-UI-01038-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REILLY CONSTRUCTION CO INC**  
Employer

**OC: 01/05/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Gary Buelt (claimant) appealed an unemployment insurance decision dated January 28, 2014, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Reilly Construction Company, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 20, 2014. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate.

**ISSUE:**

The issue is whether the claimant was discharged for work-related misconduct.

**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 employed as a full-time driver from June 10, 2013, through December 24, 2013, when he was discharged because he did not pass the Department of Transportation (DOT) physical on December 20, 2013. He did not pass the DOT physical because his A1C, which is a test that measures blood sugar levels, was too high. The claimant had recently been in the hospital due to problems with diabetes and his gall bladder.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. The employer failed to meet its burden. Work-connected misconduct has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated January 28, 2014, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/pjs