

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY E BOOZELL
Claimant

APPEAL NO. 13A-UI-02100-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELLIOTT AUTO SUPPLY CO INC
Employer

OC: 01/20/13
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Timothy Boozell, filed an appeal from a decision dated February 21, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, on April 2, 2013. The claimant participated on his own behalf. The employer, Elliott Auto Supply Company, Inc. (Elliott) was paged in the main waiting area at 10:59 a.m. and 11:15 a.m. No one was present and the employer did not participate.

ISSUE:

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

FINDINGS OF FACT:

Timothy Boozell was employed by Elliott from October 21, 2011 until January 18, 2013 as a full-time delivery specialist. He had received two written warnings during his employment, one for use of a cell phone and the other for not being “professional” with co-workers.

On January 18, 2013, the claimant was taken to a meeting room by his supervisor, Karen Davis, and told his services were no longer needed. She said he had “yelled” at a co-worker and it had been reported to her by another employee. Mr. Boozell denied yelling at anyone but Ms. Davis told him he was no longer needed and he left.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer did not participate to present any evidence to support its decision to discharge the claimant. No testimony or evidence was presented to rebut the claimant's denial. The employer has not met its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of February 21, 2013, reference 01, is reversed. Timothy Boozell is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/tll