

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NOREN D SMITH
Claimant

APPEAL NO. 07A-UI-08792-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GMT CORPORATION
Employer

OC: 04/08/07 R: 03
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Noren Smith filed an appeal from a representative's decision dated September 6, 2007, which denied benefits based upon his separation from GMT Corporation. After due notice was issued, a hearing was held on October 1, 2007. Mr. Smith participated personally. The employer participated by Kendall Kelly, human resource manager.

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Smith was employed by GMT Corporation from August 14, 2006, until July 31, 2007, when he was discharged from employment. The claimant held the position of full-time material handler and was paid by the hour. His immediate supervisor was Rick Emsign. Mr. Smith was discharged from his employment for conducting personal business during working hours. The claimant had made arrangements with an individual other than the claimant's supervisor to purchase scrap metal "skeletons" from the company. It appears that although the claimant was required to get permission from his direct supervisor for purchases, Mr. Smith did not inform Mr. Emsign of the purchase plans.

On July 30, 2007, the claimant was observed leaving the company's facility during working hours with his personal pickup truck and trailer, returning, and loading the "skeletons" onto his vehicles. The claimant was aware that he was being paid throughout this time by the company, and the claimant had been previously warned only to perform job duties while on company time. The company pays employees during the lunch period and workers are expected to conduct any personal business only after working hours.

It is the claimant's position that he was aware that he needed to load the scrap on his own time and therefore came to work early on the day in question. When a semi trailer truck blocked the claimant's access, the claimant was not able to load and weigh the scrap prior to working hours.

The claimant therefore performed these duties during working hours when he was being paid by the company, utilizing company time and equipment. When confronted by his supervisor that day, Mr. Smith stated, "It's no big deal using four to six minutes of company time." It is the claimant's further position that he believed that his supervisor had not treated him fairly in the past and that his discharge was unjustified.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Mr. Smith was aware of the company rule that required employees to receive the permission of their direct supervisor before making purchases of company scrap. The claimant did not follow this rule, as his supervisor was absent for a period of time. It appears that the claimant did not inform his supervisor of the purchase, however. On July 30, 2007, the claimant intended to load and weigh the scrap metal prior to beginning his work shift but was unable to do so. Instead of waiting until the next day or the conclusion of his work shift, Mr. Smith left the area to weigh his personal vehicle and trailer and subsequently loaded his purchases utilizing company time and equipment without authorization. When confronted, the claimant indicated, in effect, "It's no big deal." The evidence in the record establishes that the claimant had previously been warned to only perform job duties on company time.

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 finds that the claimant's conduct was in disregard of the employer's interests and standards of behavior. As the claimant was aware of the policy and had previously been specifically warned, the administrative law judge must conclude that the claimant's separation took place under disqualifying conditions. Benefits are withheld.

DECISION:

The representative's decision dated September 6, 2007, reference 01, is affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid for insured work equal to ten times his weekly job insurance benefit amount, provided that he satisfies all other conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw