

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY A SOLSMA
Claimant

APPEAL NO. 10A-UI-01976-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MEERDINK INC
Employer

**Original Claim: 01/10/10
Claimant: Appellant (1)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Gary Solsma filed a timely appeal from the January 29, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 22, 2010. Mr. Solsma participated. Scott Meerdink, Vice President, represented the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a commercial trucking company. Gary Solsma has had multiple periods of employment with the employer. Mr. Solsma most recently worked for the employer as a full-time truck driver from October 2008 until January 8, 2010, when Scott Meerdink, Vice President, discharged him from the employment. Mr. Meerdink discharged Mr. Solsma from his truck driving duties in response to notification from his insurance carrier that the insurer would no longer cover Mr. Solsma's operation of the employer's truck(s). The insurer would no longer cover Mr. Solsma because Mr. Solsma had several driving violation convictions on his Iowa Department of Transportation Motor Vehicle Report, which documented seven speeding offenses, three of which occurred during the most recent period of employment.

The employer received the notice of discontinuation of insurance coverage on December 31, 2009 and spoke to Mr. Solsma on January 4, 2010. Mr. Meerdink told Mr. Solsma he could no longer continue him in his driving duties. Mr. Meerdink offered Mr. Solsma night employment washing trucks, but Mr. Solsma declined the work due to the hours involved.

The employer had run an annual motor vehicle report for Mr. Solsma at the beginning of October 2009. After reviewing the multiple convictions on that report, the employer warned Mr. Solsma that its insurer would probably drop coverage for Mr. Solsma when it became aware of the most recent violations and told Mr. Solsma that the employer would have to discharge him from the employment if that happened.

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 in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980), the Iowa Supreme Court held that when a claimant lost his insurability, and thereby lost his ability to perform his duties, because of traffic tickets he accumulated, the loss was self-inflicted and disqualifying misconduct.

The weight of the evidence indicates that Mr. Solsma rendered himself uninsurable by the employer's insurance carrier through his multiple driving convictions. Mr. Solsma thereby rendered himself incapable of performing his assigned duties. Mr. Solsma knew throughout the employment that he needed to be insurable under the employer's policy to continue in his duties, but nonetheless continued to violate the rules of the road. Under the ruling in Cook, Mr. Solsma's conduct was misconduct in connection with the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Solsma was discharged for misconduct. Accordingly, Mr. Solsma is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Solsma.

DECISION:

The Agency representative's January 29, 2010, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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