

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN S HATFIELD
Claimant

APPEAL NO. 12A-UI-10275-VS

CROSS-DILLON TIRE INC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/08/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated August 22, 2012, reference 05, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 8, 2012, in Davenport, Iowa. The claimant did not show up for the hearing and did not participate. The employer participated by John Sorgenfrey, general manager. The record consists of the testimony of John Sorgenfrey and Employer's Exhibits 1-3.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer sells and services tires for all vehicles. The claimant was hired on January 3, 2012, as a service technician. The claimant would be required to drive a service vehicle and make calls on customers in the field. He was a full-time employee. His last day of work was May 30, 2012. He was terminated on May 30, 2012.

When the claimant was hired he did not have a valid driver's license in Iowa. The employer told the claimant that he would be trained in the shop until he got his license. During the ensuing months, the claimant was asked about the license. He gave various reasons for why he could not get a license including a problem in Kansas. On May 23, 2012, the claimant was told that he needed to come up with some documentation on why he did not have a license. The claimant did not provide any documentation. The employer decided to terminate the claimant. In addition to the problems with the license, he had some attendance problems.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

The claimant is eligible to receive unemployment insurance benefits. Although the claimant was required to have an Iowa driver's license and did not get one, the employer allowed the claimant to work for approximately five months without that license. His subsequent termination for not having that license is not for an act of *current* misconduct, as required by Iowa law. There was also insufficient evidence to show misconduct for excessive unexcused absenteeism. The employer admitted that he did not have the best documentation on the claimant's absences. There was evidence of only two instances of absenteeism and no evidence of prior warnings on absenteeism. Given these circumstances, the claimant will not be disqualified from receiving unemployment insurance benefits, provided he meets all other eligibility requirements.

DECISION:

The decision of the representative dated August 22, 2012, reference 05, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs