

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY L DIETRICH
Claimant

APPEAL NO. 06A-UI-11590-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

D C TAYLOR CO
Employer

**OC: 11/05/06 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 30, 2006, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 18, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Marty Kelsey. Bob Pence participated in the hearing on behalf of the employer with a witness, Laura Dooley.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer from July 19, 1983, to November 6, 2006. For the last 10 to 12 years, the claimant worked as a warehouse manager.

During the summer of 2006, Marty Kelsey, one of the employees that the claimant supervises hired two individuals for some temporary work who were unemployed at the time from the company and receiving unemployment insurance benefits. Kelsey agreed to the individuals' requests that they be compensated with tool kits owned by the employer rather than being paid wages that they would have to report on their unemployment insurance claims.

A couple of weeks later, the claimant found out what Kelsey had done. He did not report it to anyone in management. On October 30, 2006, the employer received an anonymous call indicating that Kelsey and the claimant were involved in giving away company tools. The caller was asked to put this in writing, which the caller did on November 3, 2006.

After investigating the matter, the employer determined that the claimant had knowledge of Kelsey giving company tools away and the claimant was discharged for this on November 8, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant knew that paying employer's with tools instead of paying them wages was wrong. Even worst, the individuals were drawing unemployment insurance benefits from the employer at the time and the method of paying the individuals was fraudulent and against the employer's interests since their unemployment insurance benefits would have been reduced if they had been paid properly. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated November 30, 2006, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css