

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WAYNE C CARDER
Claimant

APPEAL NO. 06A-UI-09432-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MAHARISHI UNIVERSITY OF
MANAGEMENT**
Employer

**OC: 08/27/06 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wayne Carder (claimant) appealed a representative's September 20, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Maharishi University of Management (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 9, 2006. The claimant participated personally. The employer participated by John Kennedy, Human Resources Director; DeArmond Briggs, Co-Director of Facility Management; James Bedinger, Director of Safety and Security; and John Marlay, Mechanic.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 9, 2000, as a full-time recycler. The employer assigned the claimant a company vehicle to perform his work. At the beginning of his employment the employer allowed workers some gasoline for their personal vehicles. That policy was discontinued and the claimant understood that he was not to take the employer's gasoline for his personal vehicle.

On August 28, 2006, the claimant drove his personal vehicle to the motor pool gas pump at 6:15 a.m., before the motor pool employee was on duty. The claimant filled the employer's vehicle and his personal vehicle. The combined amount of gas was then entered on the log sheet as gasoline for the employer's vehicle. After putting 10.1 gallons of gasoline in his personal vehicle the claimant cleared the pump numbers to conceal his actions. The employer saw the claimant's actions and terminated his employment for theft of company property. The claimant admitted his actions were wrong.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant was discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally took gasoline for his own purposes. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's September 20, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/cs