

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**ALLEN C FULLER  
425 MT VERNON  
COUNCIL BLUFFS IA 51501**

**RED GIANT OIL COMPANY  
PO BOX 247  
1701- 3<sup>RD</sup> ST  
COUNCIL BLUFFS IA 51501**

**Appeal Number: 05A-UI-02166-BT  
OC: 01/16/05 R: 01  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Allen Fuller (claimant) appealed an unemployment insurance decision dated February 21, 2005, reference 01, which held that he was not eligible for unemployment insurance benefits because he was suspended from Red Giant Oil Company (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 17, 2005. The claimant participated in the hearing. The employer participated through Steve Casson, General Manager and Mark Austin, Transportation Manager. Employer's Exhibits One and Two and Claimant's Exhibit A were admitted into evidence.

#### 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 employed as a full-time transport driver from April 9, 2003. He was suspended on January 17, 2005 as a result of an oil spill caused by his lack of attention to detail while making a delivery to a customer in Illinois on January 13, 2005. The claimant was sitting in the cab of his truck while transferring oil into the assigned tank and did not observe the oil coming out of the overflow pipe that is approximately 20 feet above the ground. Consequently, the amount of oil discharged was from 5,000 to 6,000 gallons and the wind carried it out over the area. The cost of clean up will range from \$50,000.00 to \$100,000.00.

The claimant failed to follow Department of Transportation regulations and company procedures when making this delivery. He had delivered hundreds of thousands of gallons of oil and knew the routine. Had he been properly monitoring the transfer, he could have observed the overflow occurring and shut down the oil transfer, thus minimizing the amount of oil spilled and the oil carried over the area. The claimant did not inform the employer about the incident and the employer only learned of it on the following morning through its customer. The employer suspended the claimant for 30 days and he has now returned to work.

#### REASONING AND CONCLUSIONS OF LAW:

The issue to be determined in this matter is whether the claimant's disciplinary suspension was for any disqualifying reason. When an individual is unemployed as a result of a disciplinary suspension imposed by the employer, the individual is considered to have been discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9). An individual who was discharged or suspended for misconduct is disqualified from receiving job insurance benefits. See Iowa Code Section 96.5-2-a.

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 was suspended for his failure to follow company procedures and federal guidelines, which resulted in an extensive oil spill. Although this was an isolated incident, the harm caused compared to the steps required to prevent such an incident is greatly outweighed. The claimant's violation of company and federal work rules 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 employer has met its burden. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated February 21, 2005, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was suspended from work for misconduct. Benefits are withheld 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.

sdb/kjf