

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA L VOYLES
Claimant

APPEAL NO. 11A-UI-05365-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

MESABA AVIATION INC
Employer

**OC: 03/20/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Joshua L. Voyles filed a timely appeal from an unemployment insurance decision dated April 15, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, on May 25, 2011, with Mr. Voyles participating. His former employer, Mesaba Aviation, Inc., did not respond to the hearing notice.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Joshua L. Voyles was employed by Mesaba Aviation, Inc. from September 21, 2008, until he was discharged March 22, 2011. He last worked as an A & P mechanic.

Mr. Voyles had been on an investigatory suspension for the two weeks prior to his discharge. In violation of a company policy prohibiting photography and video on company property, Mr. Voyles made a video of a coworker inflating a life vest. Mr. Voyles was suspended and then discharged for his part in creating the video, which he also posted on the internet. The photographic equipment belonged to Mr. Voyles. He and the co-worker jointly decided to create the video and to post it. The coworker, too, was discharged. Mr. Voyles had received a warning in November 2010 for horseplay.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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.

As noted above, the employer did not participate. Nevertheless, the claimant's own testimony establishes that he violated a known rule by creating a video on company property and that he subsequently posted the video online. When viewed in the context of a prior warning in November 2010, the evidence is sufficient to establish disqualifying misconduct.

DECISION:

The unemployment insurance decision dated April 15, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to the times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw