

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HERSHEL L ROACH
Claimant

APPEAL NO. 07A-UI-07646-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'REILLY AUTOMOTIVE INC
Employer

OC: 07/15/07 R: 01
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

O'Reilly Automotive, Inc. (employer) appealed a representative's August 7, 2007 decision (reference 01) that concluded Hershel L. Roach (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 27, 2007. The claimant participated in the hearing. John Bueoy appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 30, 2005. He worked full time as a parts specialist in the employer's Onawa, Iowa, automotive part retail store. His last day of work was July 2, 2007. The employer discharged him on that date. The reason asserted for the discharge was excessive errors.

The claimant had a repeated problem getting the correct parts ordered, for which he had been verbally reprimanded prior to June 27. On June 27, after multiple complaints from some of the employer's larger business clients, the employer gave the claimant a first and final written warning regarding his job performance, specifically ordering incorrect parts. On or about June 28, the claimant discussed with a client the ordering of some gears for a pickup. He assumed it was a Chevy pickup, as that was the make he was most familiar with as to the type of gears the customer was seeking, so he ordered gears for a Chevy pickup. However, in discussion on June 29 or June 30 the claimant was discussing the pickup with the employer and realized he had ordered for the wrong make of pickup. The claimant and the employer attempted to remedy the problem, but there was a resulting delay in the customer getting the necessary gears. As a result of this additional error, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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.

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or

- b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
- 2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 - 1. The employer's interest, or
 - 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is his repeated errors in parts orders. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. There is no evidence the claimant intentionally failed to work to the best of his abilities. While the employer had a good business reason for discharging the claimant, the claimant's ordering error was the result of inefficiency, unsatisfactory conduct, or ordinary negligence. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's August 7, 2007 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw