

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES R MCMURRY JR
Claimant

APPEAL NO. 08A-UI-05519-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EAST WEST STAFFING LLC
Employer

**OC: 05-27-07 R: 04
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 5, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on June 30, 2008. The claimant did participate. The employer did participate through Michele Mutchler, On Site Manager.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was assigned to work at the Scott's Company in Fort Madison, Iowa, as a forklift operator full time beginning October 1, 2007 through May 8, 2008 when he was discharged.

On May 8, the claimant was working his 10:00 p.m. to 6:30 a.m. shift. The forklift drivers are assigned to work with radios that are turned in at the end of their shift. The claimant had obtained his work radio from another worker on the shift ahead of him. The claimant ended his shift and was asked by a supervisor to return the radio to the company. The claimant refused to return the radio into the company but instead went into the locker room and locked the radio in the coworker's locker. The claimant was specifically told that the radio was the property of Scott Company and that his failure to turn it in to the supervisors as requested was placing his job in jeopardy. The claimant refused to turn in the radio and was discharged. The claimant had received the company handbook that indicated hiding Scott Company property was prohibited and could lead to his discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985). The claimant refused to give the employer their radio. The claimant was obligated to return to the employer their own equipment, notwithstanding the fact that he had told another employee he would return it to him. The claimant had an obligation to the employer that was greater than his word to his coworker. The claimant was not allowed to help a coworker defeat the employer's policy of turning in radios. The claimant's conduct, that is his refusal to turn in the radio, which was Scott Company property is misconduct sufficient to disqualify him from receipt of unemployment insurance benefits.

DECISION:

The June 5, 2008, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has

worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Inasmuch as no benefits were paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css