

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC D PRINE
Claimant

APPEAL NO. 11A-UI-02026-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST INDUSTRIAL SUPPLY GROUP
Employer

OC: 12/26/10
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Midwest Industrial Supply Group filed an appeal from a representative's decision dated February 17, 2011, reference 02, which held that no disqualification would be imposed regarding Eric Prine's separation from employment. After due notice was issued, a hearing was held by telephone on March 17, 2011. Mr. Prine participated personally. The employer participated by Steve Passmore, Manager.

ISSUE:

At issue in this matter is whether Mr. Prine was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Prine was employed by Midwest Industrial Supply Group from September 4, 2009 until December 13, 2010. He was last employed full time as a customer support person and delivery driver. He was discharged after the employer lost its account with Rite Hite, the primary customer to whom Mr. Prine made deliveries. Rite Hite indicated that its decision was based, at least in part, on late deliveries by Mr. Prine.

Rite Hite's agent, Julie Frye, complained at least 17 times in October and November that Mr. Prine had failed to deliver product by the expected date. The reason he usually gave was that the product was not on the shelf and, therefore, he had to wait for a new delivery. After checking with the individuals responsible for inventory, the employer determined that this was not always the case. However, the inventory, as reflected in computer records, was not always accurate. Mr. Prine was never warned, either verbally or in writing, that his job was in jeopardy due to late deliveries.

The decision to discharge Mr. Prine was due to the fact that Ms. Frye alleged that he gave her false information regarding a late delivery. She related that Mr. Prine told her a delivery due on December 10 would not be made because he was waiting on a truck to deliver the needed product. She also related that she then found out he was deer hunting on December 10. He

did go deer hunting, but it was on December 8. Ms. Frye notified the employer on December 13 that it would not be receiving the contract and Mr. Prine was discharged the same day.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code § 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The evidence must establish a deliberate and intentional disregard of the employer's standards or interests. See 871 IAC 24.32(1). In the case at hand, Mr. Prine was discharged because of complaints of late deliveries. The evidence failed to establish that he deliberately failed to make timely deliveries in spite of having product available for delivery. Moreover, he was never warned that he was engaging in conduct that might lead to his discharge.

The administrative law judge does not doubt that Mr. Prine sometimes failed to make deliveries when product was available. The administrative law judge is not satisfied that the failures were intentional. At most, he was negligent in failing to recognize that the product was, in fact, on hand. Negligence constitutes disqualifying misconduct only if it is so recurrent as to manifest a substantial disregard of the employer's interests or standards. The employer is in possession of the evidence that would establish the frequency with which Mr. Prine failed to make deliveries when product was in stock.

The employer did not present any documentary evidence concerning Mr. Prine's deliveries that were alleged to be late. Instead, the employer relied on hearsay testimony from others in concluding that product was available on approximately 70 percent of the occasions when a delivery was alleged to be late. Since the employer's inventory is not always accurate, the reliability of the employer's hearsay testimony is questionable. The employer failed to present sufficient evidence to establish that Mr. Prine's negligence was so recurrent as to constitute misconduct. As such, it must be concluded that the employer failed to satisfy its burden of proof in this matter. While the employer may have had good cause to discharge, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated February 17, 2011, reference 02, is hereby affirmed. Mr. Prine was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs