

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLEN E HUSMANN
Claimant

APPEAL NO: 15A-UI-00298-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLAGGER PROS USA LLC
Employer

OC: 12/14/14
Claimant: Appellant (1)

Iowa Code § 96.5(2) – Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's January 7, 2015 (reference 03) determination that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the February 6 hearing. Kaleena Middendorf, a dispatcher and human resource assistant, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 2012. He worked as a full-time seasonable traffic control flagger. When the employer hired the claimant, he received a handbook. The handbook informs employees they are not allowed to use the employer's company gas card without authorization for personal vehicles. The policy also informs employees that if they do this, they are subject to being discharged.

On November 30 the claimant used the employer's gas card to put gas in his truck. The claimant did not have his wallet with him and was driving his personal truck. The claimant knew he should have called the employer to receive permission to use the gas card but did not.

The employer discovered the November 30 charge on December 9. The employer noticed a charge on a gas card, connected to a vehicle the employer had not been using, had been used to charge gas. The employer contacted the company and obtained the license number of the truck that had been filled. The vehicle was the claimant's personal truck.

The employer contacted the claimant and asked him about this. Initially, the claimant said he did not know if he used the gas card and could not remember. After the employer told him there was a video of the claimant putting gas into his truck, the claimant mailed in a check for the amount he had charged. The employer discharged the claimant on December 9, 2014 for using the gas card without authorization for his personal vehicle.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew he should have obtained authorization to use the employer's gas card for his personal vehicle but did not. The claimant's failed to timely notify the employer he had used the card and did not immediately pay for the gas he put into his truck; the claimant deliberately violated the employer's standard of behavior the employer had a right to expect from him. The claimant committed work-connected misconduct. As of December 14, 2014 the claimant is not qualified to receive benefits.

DECISION:

The representative's January 7, 2015 (reference 03) determination is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of December 14, 2014 the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

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