

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHESTER L VANDERLINDEN
Claimant

APPEAL NO: 13A-UI-02418-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BILLION MOTORS INC
Employer

OC: 01/20/13
Claimant: Appellant (2)

Section 96.5-2-a - Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 20, 2013 reference 03 that held he was discharged for misconduct on January 18, 2013, and benefits are denied. A telephone hearing was held on March 27, 2013. The claimant participated. Shane McMullen, Assistant Service Manager; and Mark Closter, Service Manager, participated for the employer. Employer Exhibits 1, 2 & 3 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began employment on August 22, 2011, and last worked for the employer as full-time laborer on January 18, 2013. The claimant performed detailing work for the employer.

The employer issued claimant a written disciplinary warning on March 5, 2012. He signed for the receipt of it. The employer assigned claimant a detailing job for a 2013 Silverado Pick-up on January 18. The private customer complained the job had not been properly done. There was dust on the dash, particles left on the front passenger carpet, and the exterior clear spray had been applied over dirt areas that had not been washed. The customer demanded the employer provide a new vehicle. Claimant denies the detailing job required him to clean the interior, and the employer did not show him the work deficiencies.

The employer discharged claimant for failing to properly perform the January 18 detailing job. The separation notice and a January 3 written discipline are not signed by claimant. Claimant denies receiving the written discipline and the notice does not require a signature.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on January 18, 2013.

The employer did not offer as evidence the written specifications of the January 18 detail package job that would establish if claimant was required to clean the vehicle interior. It did not confront claimant with the work deficiencies by showing him what he had failed to do and/or performed unsatisfactory. The failure of the employer to obtain claimant's signature for the receipt (not admission) of the written discipline puts into question whether it was presented on the dates indicated. The employer evidence or lack of offered evidenced does not establish job disqualifying misconduct in this matter.

DECISION:

The department decision dated February 20, 2013, reference 03, is reversed. The claimant was not discharged for misconduct on January 18, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/tll