

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY L ALLOWAY

Claimant

APPEAL NO. 10A-UI-16666-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RYDELL CHEVROLET INC

Employer

OC: 10/31/10

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 30, 2010 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 17, 2011. Claimant participated. Employer participated through Service Manager Jim Albus and service consultant Nate Hazen.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a spray and bed liner technician and was separated from employment on November 4, 2010. Nate Hazen, Ronald Butler, Scott Hiet, and D.J. Manahl reported that on Saturday, October 30, claimant was showing multiple boxes of personal tools for sale out of his van while on work time. Hazen and Heit were not on work time but Butler and Manahl were and were verbally warned. Employer discharged claimant because Albus had warned him in writing on October 18, 2010 because on October 16 he used the company vehicle for personal business (he picked up his girlfriend to give her a ride home) during work time after Hazen and Katie Graham told him he could not do that. Claimant responded he was going anyway whether Hazen liked it or not.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Claimant's misuse of company time after having been warned was misconduct sufficient to warrant a denial of benefits.

DECISION:

The November 30, 2010 (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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw