

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCUS A GREEN
Claimant

APPEAL NO. 09A-UI-18749-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GMK ENTERPRISES INC
FABRION OF CENTRAL IOWA
Employer

Original Claim: 10/11/09
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer appealed a department decision dated December 2, 2009, reference 03, that held the claimant was not discharged for misconduct on October 3, 2009, and that allowed benefits. A telephone hearing was held on January 27, 2010. The claimant participated. Glen Kohout, President; Logan Volz, Senior Certified Technician; and Mike Jones, of West-Finch Dealership, participated for the employer. Employer Exhibits A & B was 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 testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a full-time driver/laborer on October 13, 2009. The claimant was hired to drive technician Volz to his dealer accounts for the employer, because his driver's license was suspended due to a DWI offense. The claimant also assisted Volz in cleaning cars at the dealership accounts.

On October 26, Volz asked the claimant to slow down as he was driving in excess of the speed while in a company van on a trip to a Grinnell area dealership. Upon the return trip, claimant began driving in excess of the 70 mph speed limit, and Volz requested he slow down. While claimant eventually reduced his speed, he said to Volz, "You cannot tell me how to drive." Volz immediately reported the incident to President Kohout, who later called the claimant into a conference. Kohout emphasized safety driving the company van and the need to obey the speed limit. Claimant responded that nobody tells him how to drive, and Kohout responded that he was the president, and he would comply.

Two days later, Volz had trouble communicating with the claimant while working, as he was wearing head phones, and he asked him to remove them. The claimant balked at the request, and after complying for a period, resumed using them. Later the same day, the claimant made

an err by picking up the wrong vehicle that had been described to him in writing; and when President Kohout contacted him about this issue, the communication was difficult due to him wearing headphones. Kohout requested the claimant to refrain from using headphones, as he believed this was causing a communication problem. Volz observed the claimant using headphones at work the next day.

While at a dealership on October 30, Volz gave the claimant some cleaning instructions, and he resisted with comments like, "You ain't trying me, don't treat me like a kid." When claimant ignored Volz's instructions, he directed the claimant to quit work and go sit in the company van. Claimant responded by coming at Volz in a loud and aggressive manner. When Volz threatened to call the police, the claimant backed off.

Volz reported the claimant's conduct to Kohout by telephone, as he was out of town. Kohout instructed the claimant and Volz not to work on Monday, November 2, and he later had a meeting with them the following day. When it became apparent that the claimant and Volz could not work together, Kohout discharged him when he learned it was cost prohibitive to place him somewhere else with the company (See Exhibit A – Kohout written statement).

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 that the claimant was discharged for misconduct in connection with employment on November 3, 2009.

While it is apparent the claimant balked and was resistive to Volz's requests, this behavior was due more to a personality conflict between the parties than an intentional disregard of work instructions that rises to the level of job disqualifying misconduct. Claimant was hired to be Volz's driver, and it does not appear that the supervisor-employee relationship was made clear by Kohout to the claimant. The fact that President Kohout considered moving the claimant's employment to another area rather than discharge him supports the conclusion he perceived the issue was a personality conflict between two employees rather than a deliberate disregard of work instructions that may be considered insubordination.

DECISION:

The department decision dated December 2, 2009, reference 03, is affirmed. The claimant was not discharged for misconduct on November 3, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw