

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC HIMMELSBACH**  
Claimant

**APPEAL NO: 12A-UI-09017-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ASSOCIATED MATERIALS LLC**  
Employer

**OC: 07/03/12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Eric Himmelsbach (claimant) appealed an unemployment insurance decision dated July 19, 2012, reference 04, which held that he was not eligible for unemployment insurance benefits because he was discharged from Associated Materials, LLC (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 6, 2012. The claimant participated in the hearing with Attorney Zach Crowdes. The employer participated through Mark Grenko, human resources manager. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The employer is a vinyl window manufacturer with approximately 352 employees and they operate a first and second shift. The claimant was employed as a full-time maintenance planner from October 2011 through June 27, 2012, when he was discharged after he lost his driver's license. His daily job duties included driving the employer's vehicle to run errands and/or to pick up supplies. Consequently, he was required to have a valid driver's license. The claimant lost his license after he was arrested for operating a motor vehicle while under the influence of intoxicants.

The claimant subsequently pled guilty to this charge but was able to drive his own vehicles after showing proof of SR22 and having an interlock device installed. He wanted to have this type of device placed on the employer's vehicle or to possibly use his own vehicle for work purposes, but the employer's insurance company would no longer insure him.

The employer offered the claimant an alternate position with less pay, but the claimant was unwilling to accept a lesser paying position.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged because he lost his driver's license, which was a condition of employment. He admitted that driving the employer's vehicle was part of his daily job duties. Where an individual's driving restrictions have been self-inflicted and the individual had reason to know that losing his driver's license could put his job in jeopardy, the loss of ability to drive can be found to be intentional, and therefore disqualifying misconduct. *Cook v. Iowa Department of Job Service*, 299 N.W.2d 698 (Iowa 1980). The employer has met its burden. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated July 19, 2012, reference 04, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw