

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BLAKE A ROBERTS
Claimant

APPEAL NO. 14A-UI-12431-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN MACHINERY INC
Employer

OC: 11/02/14
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated December 1, 2014 (reference 02) which denied unemployment insurance benefits, finding that the claimant was discharged from work under disqualifying conditions. After due notice was provided, a telephone hearing was held on December 23, 2014. Claimant participated. Participating with the claimant but not testifying was his mother Kathern Roberts. The employer participated by Ms. Jen Vollmuth, Human Resource/Business Partner.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Blake Roberts was employed by Titan Machinery, Inc. from November 12, 2012 until November 3, 2014 when he was discharged from employment. Mr. Roberts was employed as a full-time service technician and was paid by the hour. His immediate supervisor was Mr. Larry Snyder.

The claimant was discharged on November 3, 2014 for an incident that had taken place on Sunday, November 2, 2014. On that date, Mr. Roberts had been stopped by local police while driving a company universal terrain vehicle on a road adjacent to the company's Sioux City, Iowa facility. Mr. Roberts was off-duty and not working at the time of the incident and another individual, who was a friend of Mr. Roberts, had accompanied the claimant as he operated the universal terrain vehicle. The company facility is closed on Sundays and the individual accompanying Mr. Roberts was not a perspective customer but only a personal friend of the claimant. Mr. Roberts' operation of the company vehicle on public roads adjacent to the facility was reported to the company by the police officer who had stopped Mr. Roberts for investigation.

Because Mr. Roberts had not been authorized to operate the UTV off company property and on public roads and had not been authorized to perform duties for the company, a decision was made to terminate Mr. Roberts from his employment. The claimant had been warned on two previous occasions. On one occasion for backing into a company fence and on another occasion for damaging equipment as it was being stacked.

It is the claimant's position that he was operating the company's universal terrain vehicle with a personal friend on a day that the employer's facility was closed for the purpose of familiarizing himself with the vehicle, in a form of a demonstration ride, so that he could access the vehicle's capabilities for another individual who was not present but might be interested in purchasing a universal terrain vehicle of that type.

It is Mr. Roberts' further position that because the company manager had on one occasion let his grandson operate the vehicle and at times had left the keys for others to test drive that vehicle or a similar vehicle on a weekend, he did not believe that his use of the vehicle was a violation of company policy.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

In discharge cases, the employer has the burden of proof to establish disqualifying conduct on the part of a claimant. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee, may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, Mr. Roberts subjected his employer to serious potential legal liability by operating a company all-terrain type vehicle on a public road with an unauthorized passenger during non-working hours when the employer's facility was closed. The employer had no advance knowledge and had not authorized Mr. Roberts to drive the vehicle, to take it off private property onto public roads, or to increase his potential liability by providing a ride to an unauthorized passenger. Mr. Roberts was aware that in the previous use of the vehicle, under similar circumstances, had taken place only with the specific knowledge and authorization of the manager of the facility where Mr. Roberts was employed.

Based on the evidence in the record, the administrative law judge concludes that the claimant knew, or should have known, that any personal use of the vehicle in question, especially when the facility was closed, could only take place with the knowledge and preapproval of company management. The claimant's conduct not only jeopardized his employment with the company but also subjected the company to potential substantial legal liabilities. The administrative law judge is aware that it is Mr. Roberts' position that he was only operating the vehicle as a type of self-demonstration ride so that he could extoll the vehicles virtues to an absent buyer, however, this explanation strains credibility.

Mr. Roberts conduct showed a willful disregard for his employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he is otherwise eligible.

DECISION:

The representative's decision dated December 1, 2014 (reference 02) is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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