

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERNESTO RUIZ**

Claimant

**M GERVICH & SONS INC**

Employer

**APPEAL NO: 10A-UI-13626-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/08/09**

**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 September 29, 2010, reference 03, that held he was discharged for misconduct on August 30, 2010, and benefits are denied. A telephone hearing was held on November 2, 2010. The claimant, and Interpreter, Steven Rhodes, participated. Doug Gervich, President, participated for the employer.

**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 truck driver on April 12, 2010, and last worked for the employer on August 30. The claimant had a valid CDL when hired. The employer discharged claimant because its insurance carrier would not provide coverage for him due to his driving record.

The claimant consented to provide his MVR to the employer on August 18. The MVR showed the claimant had incurred motor vehicle violations that occurred prior to his employment. The employer insurance carrier would not cover the claimant based on his pre-employment driving record.

**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 August 30, 2010.

The employer discharged the claimant for a non-work-related, pre-employment driving record that does not constitute misconduct in connection with employment. The employer could have run an MVR at the time of hire that would have revealed the driving record, which its insurance carrier later relied upon to deny further insurance coverage (emphasis added). The claimant committed no act of misconduct while working for the employer.

**DECISION:**

The department decision dated September 29, 2010, reference 03, is reversed. The claimant was not discharged for misconduct on August 30, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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