

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANTONIO D SMITH**

Claimant

**APPEAL NO. 13A-UI-13383-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLIED BLENDING & INGREDIENTS INC**

Employer

**OC: 11/10/13**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated December 4, 2013, reference 02, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on December 26, 2013 by telephone conference call. The claimant participated personally. The employer participated by Jeff Brunen, plant manager. The record consists of the testimony of Jeff Brunen and the testimony of Antonio Smith.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer does food manufacturing. The employer has four different sites in Keokuk, Iowa. The claimant was hired on November 7, 2005. He was a shift supervisor and a full-time employee. His last day of work was November 1, 2013. He was placed on suspension on November 4, 2013. He was terminated on November 12, 2013.

The incident that led to the claimant's termination occurred on November 1, 2013. The claimant was assigned to work at a remote building. The owner of an adjacent business had been experiencing theft and installed surveillance cameras. The claimant was seen on surveillance tape removing an air conditioner, a motor, and other items. The owner contacted Jeff Brunen, the plant manager, and identified the claimant as the individual who took the items. Mr. Brunen asked the claimant if he had taken those items and the claimant said that he did.

The claimant has been charged with second degree theft. Those charges are still pending.

The employer has a written policy, of which the claimant was aware, that dishonesty is grounds for immediate termination.

## 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed to the employer is honesty. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The claimant admitted that he took items off the property of an adjacent building. He testified that he thought the items were "trash." This testimony is not credible. The claimant, who said he did "scrapping on the side", took materials that did not belong to him. He went onto the property of an adjacent building and loaded these items onto his truck. The items may or may not have been trash. The claimant still had no right to take the items. In addition, he took the items while he was supposed to be working for the employer. The claimant said he had not clocked in, but Mr. Brunen testified that the surveillance tape showed the claimant taking the items after the start time of his shift. This testimony is accepted. Although the administrative law judge did not see the tape, it is unlikely that Mr. Brunen would have incorrectly testified about the time the theft was recorded when his answer could so easily be discredited.

The greater weight of the credible evidence shows that the claimant knowingly went onto the property of an adjacent business and took items that did not belong to him. He was supposed to be at work for the employer at the time. This is dishonesty and constitutes disqualifying misconduct. Benefits are denied.

**DECISION:**

The decision of the representative dated December 4, 2013, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs