

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JACOB K HALE
Claimant

CNH AMERICA LLC
Employer

APPEAL 14A-UI-04181-G
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/23/14
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 11, 2014, (reference 01) unemployment insurance decision that denied benefits based upon dishonesty to the employer. The parties were properly notified about the hearing. A telephone hearing was held on May 9, 2014, in Des Moines, Iowa. Claimant participated by phone along with his union representative Mike Edwards. Employer participated through Jill Dunlop. Employer's Exhibits A through D were received into the record.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a CNC machine operator and was separated from employment on March 21, 2014. The claimant was discharged for violating the employer's rules of conduct for falsifying his time record. (Employer's Exhibit D)

The claimant was scheduled to attend military drill exercises on Saturday March 8, 2014. He notified employer that he would need to take time off on March 7, 2014 for sleep and for time to prepare. Claimant indicated in his original request that he would need to leave early from his shift on that date. The claimant was scheduled to work at 2:00 p.m. until 10:00 p.m. on that date. On March 7, 2014 the claimant called in and indicated that he could not be in for work at all that day because his drill schedule required him to take the entire day off work.

Jill Dunlop contacted the Iowa National Guard post where the claimant reported on behalf of the employer. She spoke with Captain Nicholas Miller who explained that claimant was to report for duty on March 8, 2014 at 7:00 a.m. Captain Nicholas also explained that the employer must give the claimant a total of eight hours off from work prior to reporting for drill, as is required by law. The claimant did not need to take his entire shift off from work on the Friday before drill under the law. The claimant's explanation for needing the entire day off was not accurate.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the

absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). Employee has a duty to be honest in dealings with employer. One incident of dishonesty may constitute misconduct. *White v. Emp't Appeal Bd.*, 448 NW 2d 691 (Iowa: Ct. App. 1989)

The employer has presented substantial and credible evidence that claimant was discharged from work for being dishonest. This is evidence of deliberate conduct in violation of company policy, and procedure. Benefits are denied.

DECISION:

The April 11, 2014, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs