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

DONALD D NELSON
Claimant

APPEAL NO. 08A-UI-10779-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAY TRANSPORTATION INC
Employer

**OC: 10-19-08   R: 03
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 12, 2008, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on December 3, 2008. The claimant did participate. The employer did participate through Darrin Gray, President. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an over-the-road driver full time beginning April 17, 2007 through October 21, 2008 when he was discharged.

The claimant was warned on September 19 for having an unauthorized passenger in the truck and for failing to act in a safe an appropriate manner at a customer's location when he pulled the truck away from the dock before the customer was done unloading it. He was also written up for failing to follow the employer's instructions that he report to the yard with the truck. The claimant admitted to the employer that he did not report to the yard because he knew he was going to be disciplined and did not want to deal with the employer. The warning given to the claimant on September 19 put him on notice that any other problems or and additional failure to follow instructions would lead to his discharge.

On October 19, the claimant was trying to deliver a trailer to Tyson, which they would not accept because the temperature in the trailer was too low. The claimant notified Darrin Gray who was taking calls that weekend. The claimant took the truck and trailer to the Wal-Mart parking lot and told Mr. Gray that the truck would not start. The claimant wanted permission to go into the Wal-Mart store and purchase jumper cables. Mr. Gray instructed the claimant that he was not to purchase anything, but that Mr. Gray had made arrangements to have a repair service come to the Wal-Mart parking lot and not only repair the trailer, but jump the claimant's truck. The claimant disregarded Mr. Gray's instructions and cancelled the service that was to come and

jump the truck. The claimant bought jumper cables in Wal-Mart and used the trailer motor to jump the truck. Mr. Gray found out the claimant had cancelled the jumper service later that same evening. The truck battery would not hold a charge and another jump had to be arranged to get the truck going. The claimant did not follow Mr. Gray's instructions on getting the truck jumped. It was not up to the claimant to determine how the truck should be jumped or fixed. The claimant did not have permission to cancel the jump repair order that Mr. Gray had arranged.

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.

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 question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985).

The claimant was given instructions by Mr. Gray about how he wanted the jump repair performed on the truck. The claimant disregarded Mr. Gray's instructions and tried his own method of jumping the truck. The claimant failed to follow the employer's instructions. The

employer is within their rights to determine how and when repairs to their equipment should be handled. The claimant had previously been warned about his failure to follow instructions. The claimant's actions, that is, his specific disregard of the employer's instructions, amount to misconduct sufficient to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The November 12, 2008, reference 03 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/css