

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES O TUFFIN**  
Claimant

**APPEAL NO. 13A-UI-11099-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MID AMERICA TRENCHERS LLC**  
Employer

**OC: 09/01/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated September 25, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on October 23, 2013. The hearing could not be completed at that time and the hearing was convened again on October 30, 2013. The claimant participated personally. The claimant was represented by Tyler Patrick, attorney at law. The employer participated by Jason Brown, president and owner; Justin Brown, vice president, and Kevin Crandall, mechanic. The employer was represented by Clark Mitchell, attorney at law, and Robert Thole, attorney at law. The record consists of the testimony of Jason Brown; the testimony of Justin Brown; the testimony of Kevin Crandall; and the testimony of Charles Tuffin.

**ISSUE:**

Whether the claimant was discharged for a current act of 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 is a heavy equipment dealer, specifically for trenching equipment. The claimant was hired on February 6, 2012, as a full-time heavy mechanic. The claimant's last day of work was March 4, 2013. The claimant was terminated on September 6, 2013.

The incident that led to the claimant's termination occurred on March 4, 2013. The claimant had been instructed to move a trencher. The trencher was not starting. The claimant, in an effort to find out if power was going to the starter, used a screwdriver. This maneuver is known as jumping the starter. This maneuver can be dangerous because there is no control over the machine when the starter is jumped. The claimant was seriously injured when doing this because the trencher ran over him. The claimant received weekly worker's compensation benefits. He was released for full duty on September 6, 2013. He was then terminated by the employer.

## 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 leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The claimant was not discharged for a **current** act of misconduct. The employer alleges that the claimant was insubordinate and engaged in a gross violation of its safety rules by attempting to start a trencher by using a screwdriver to jump the starter. These acts took place on March 4, 2013. The claimant was not terminated until September 6, 2013. The employer had all of the information it needed to make a decision on termination well before the actual termination took place. The claimant was interviewed by the employer on April 22, 2013. Despite having completed its investigation, the employer did not terminate the claimant until he was able to return to work without restrictions. Because the employer delayed in terminating the claimant, the alleged misconduct was no longer current. Benefits are therefore allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated September 25, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs