

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON W HATFIELD
Claimant

APPEAL NO. 10A-UI-13437-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBALL ELECTRIC INC
Employer

OC: 08/22/10
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 September 22, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 15, 2010. The claimant participated. The claimant was represented by Matt Reilly, attorney at law. The employer participated by Jerry Duball, president. The employer was represented by Mark Seidl, attorney at law. The record consists of the testimony of Jerry Duball; the testimony of Jason Hatfield; and Employer's Exhibits A, B, and C.

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 is an electrical contractor. The claimant was a journeyman electrician. He had worked for the employer for approximately seven years at the time of his termination. The claimant's last day of work was August 19, 2010. The claimant was terminated on August 19, 2010.

The incident that led to the claimant's termination occurred on August 19, 2010. The claimant was driving a company vehicle. The vehicle has the employer's name and telephone number on the outside of the vehicle. The employer received two or three phone calls from members of the public concerning the operation of that vehicle on August 19, 2010. The callers reported that the vehicle was swerving and side swiped a semi-truck. The company vehicle then exited onto First Avenue, where it stuck a pickup truck. The employer's secretary had received these calls and she in turn called Jerry Duball, who was out of the office working on some estimates.

Mr. Duball went to the scene of the accident. The accident was being investigated by the Cedar Rapids Police Department. The claimant was arrested for OWI and failing to yield. The

claimant's driver's license was taken from him. The claimant was transported to the jail. He refused to take a blood test at the police station. The claimant's license was suspended.

One of the requirements of the claimant's job was to have a valid license and be able to drive a company vehicle. The claimant was terminated because his license was suspended. The OWI charge is pending. The accident resulted in a total loss of the company vehicle, damage to the pick-up truck, and personal injury to the driver of the pick-up truck. The employer does not know the total property loss in dollars.

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. The employer has the burden of proof to establish misconduct.

The evidence is uncontroverted in this case that the claimant was involved in a motor vehicle accident on August 19, 2010, that led to the suspension of his license. The employer was informed by law enforcement and the claimant that his license was suspended. The claimant agreed that having a license was a requirement of his job. The claimant's license was suspended because he refused to take a blood alcohol test at the jail after the accident. He did not take the test until the next day, according to his testimony. The claimant was terminated on

August 19, 2010. Regardless of what happened later concerning the claimant's license, on the day of termination his license had been suspended. He could not drive a company vehicle to the job sites and service the employer's customers.

The suspension of the claimant's license was due to actions solely of the claimant himself. He was involved in a serious motor vehicle accident and refused to take a blood alcohol test. This situation is akin to an employee of a casino who loses his gaming license or a truck driver who loses his CDL license. The claimant's misconduct led to the suspension of his license. The employer has established misconduct. Benefits are denied.

DECISION:

The representative's decision dated September 22, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until 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.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw