

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN P LOWE
Claimant

APPEAL NO: 06A-UI-08895-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIPER MOTOR COMPANY INC
Employer

**OC: 08/06/06 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Piper Motor Company (employer) appealed a representative's August 30, 2006 decision (reference 01) that concluded Shawn Lowe (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 21, 2006. The claimant participated personally. The employer participated by Bruce Piper, Owner. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into evidence. The employer offered two exhibits which were marked for identification as Exhibits One and Two. Exhibits One and Two were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct and is not eligible to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 21, 2003, as a full-time manager. The claimant purchased cars for the employer at auctions and various other sources. Once the claimant purchased a car and sold it to the employer at a higher price. When the employer found out he reprimanded the claimant. Since that time the employer has reminded the claimant not to engage in that practice.

The employer chose not to apply to be a registered dealer at an auction the claimant attended regularly. The claimant had to attend the auction with a registered dealer, the registered dealer purchased the cars and the claimant purchased those cars from the registered dealer for the employer. The employer understood what the claimant was doing and that there were costs associated with the purchase of vehicles in this manner.

On or about July 12, 2006, the claimant purchased approximately six vehicles through a registered dealer at the auction. A co-worker of the claimant's wrote a check to the registered dealer for the vehicles. The check was written for \$600.00 more than the registered dealer paid for the vehicles. The claimant did not receive any payment for those vehicles.

The employer discovered the difference in the price of the cars and the amount he paid for the cars on approximately July 12, 2006. The employer did not approach the claimant, ask him questions or restrain the claimant's purchasing power. The claimant continued to perform his job duties. On August 5, 2006, the employer terminated the claimant after waiting for three weeks for the claimant to tell him about why there was a difference in the prices that occurred on July 12, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge finds the claimant was not discharged for misconduct and is eligible to receive unemployment insurance benefits.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on July 11, 2006, and discovered by the employer on July 20, 2006. The claimant was not discharged until August 5, 2006. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's August 30, 2006 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/cs