

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHILLIP E SMIDT**  
Claimant

**APPEAL NO. 11A-UI-16000-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WOODHARBOR DOORS & CABINETRY INC**  
Employer

**OC: 09/04/11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Phillip E. Smidt filed a timely appeal from an unemployment insurance decision dated December 9, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held January 18, 2012. Mr. Smidt did not respond to the notice by providing a telephone number at which he could be contacted. Human Resources Specialist Lorie Nelson testified for the employer, Woodharbor Doors and Cabinetry. Jeff Stokes and Chris Paulsen were present but were not called to testify.

**ISSUE:**

Was the claimant discharged for misconduct in connection with the employment?

**FINDINGS OF FACT:**

Phillip E. Smidt was employed by Woodharbor Doors and Cabinetry from April 8, 2002, until he was discharged October 28, 2011. He last worked as a maintenance specialist. The final incident leading to discharge occurred on October 28, 2011, when Mr. Smidt was observed smoking in the fork lift, a violation of company policy. He had received a warning for smoking on company property on September 22, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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.

The evidence establishes that the claimant was discharged for two violations of the company's smoking policy occurring in just over one month. This evidence is sufficient to establish misconduct. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated December 9, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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