

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY W REBOL**  
Claimant

**APPEAL NO. 14A-UI-02703-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARNER-BOCKEN COMPANY**  
Employer

**OC: 02/16/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Terry Rebol (claimant) appealed a representative's March 6, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Farner-Bocken Company (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 2, 2014. The claimant participated personally. The employer participated by Amy Ross, Human Resource Manager; Dave Holdsworth Director of Transportation; and Mark Micetich, Cross Dock Supervisor. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 September 25, 2007, as a full-time route delivery driver. The claimant signed for receipt of the employer's handbook on September 25, 2007. On January 18, 2013, the employer issued the claimant a written warning for notifying the employer he was upset and taking the rest of the day off after a co-worker took his work items and crossed his name off a work list. The employer notified the claimant that further infractions could result in termination from employment.

On February 14, 2014, the claimant arrived at a restaurant account at about 11:30 a.m. to make a delivery and found the delivery area had not been shoveled. He noticed a pickup truck shoveling snow in the front parking lot. The claimant shoveled out a path through the eight inches of snowfall in the back of the restaurant, pulled out the ramp from his truck, and started to make his delivery. When he returned he found that the pickup truck had deposited a pile of snow in front of the ramp. The claimant could not make any more deliveries without shoveling away the large pile of snow. The claimant called Supervisor Chad to report the problem. The supervisor told the claimant to speak with the worker inside the restaurant. The claimant

understood that he was not to leave a customer location without making a delivery without permission from a supervisor.

The claimant walked into the kitchen and asked, "Who's the derelict son of a bitch moving snow?" The employee told the claimant it was the owner of the restaurant and the claimant should not be delivering between 11:30 a.m. and 1:00 p.m. The claimant thought the employee and the dumping of the snow to mean he should leave and return after 1:00 p.m. The claimant left and called his Supervisor Mark just as he was getting on the road at 12:00 p.m. but the Supervisor Mark did not answer.

The Supervisor Mark called the claimant later and told him to go back. The claimant said he might return unless it was during the dinner hour of the restaurant. Supervisor Mark said, "Really?" The claimant said, "Really" and hung up. Supervisor Mark sent Supervisor Chad to the claimant's truck. The claimant was laughing and said he was not taking the items back to the restaurant. Supervisor Chad collected the product from the claimant's truck and made the delivery to the restaurant owner. The employer terminated the claimant on February 18, 2014.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. He called the owner of a customer names, he left a customer without making a delivery and without permission, and he refused to return to make a delivery. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's March 6, 2014, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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