

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L DUTCHER
Claimant

APPEAL NO. 08A-UI-07507-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REES TRUCK & TRAILER INC
Employer

**OC: 06/29/08 R: 01
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 11, 2008, reference 03, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on September 3, 2008. Claimant participated. Employer participated through Paul Reese.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time mechanic from November 13, 2006 until June 25, 2008, when he was discharged. In the last week of employment, he had installed a rear end differential on a semi, someone else test drove it and found a major oil leak because the bolts were not tight enough. Employer instructed him to repair it and make sure there was no longer a leak. He said he did and employer noticed another leak almost immediately, because the wear ring was not installed correctly. He was done working on it but had not had a chance to clean it up and double check it when someone else pulled it out of the shop, but he did not stop them from doing so and assured employer after the first leak that there was not another. Employer had warned him verbally on four or five occasions within the last month or so before the separation that his job was in jeopardy. Earlier in the employment, there were only infrequent minor problems. Another recent issue arose when a heater leaked antifreeze in the parking lot when customer backed the truck out. The leak was determined to have happened because claimant had not tightened loose bolts and the O-ring was not seated correctly. Claimant had also installed a new clutch for a customer who returned the vehicle a few weeks later because the transmission had fallen out due to loose bolts. This cost employer multiple thousands of dollars to repair the damage. Employer had told him a couple of months earlier he was not getting his work done fast enough but still emphasized quality over quantity. He was tired at work because of the time he spent working on his home.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Claimant may not have intended for any of these repair issues to occur, but he was negligent repeatedly after having been advised of the employer's concerns about his diminishing work quality. This rose to the level of disqualifying misconduct. Benefits are denied.

DECISION:

The August 11, 2008, reference 03, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw