

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANFORD L JOHNSON
Claimant

APPEAL NO. 07A-UI-11079-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE MASCHHOFFS INC
Employer

**OC: 10/14/07 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sanford L. Johnson filed an appeal from a representative's decision dated November 26, 2007, reference 01, which denied benefits based upon his separation from The Maschhoffs, Inc. After due notice was issued, a hearing was held by telephone on December 17, 2007. Mr. Johnson participated personally. The employer participated by Dan Sprague, Penny Etter, Dale Oldenkamp, and Ken Maschhoff.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from February 25, 2005 until October 15, 2007 when he was discharged from employment. Mr. Johnson was employed as a full-time field advisor and was paid by salary. His immediate supervisor was Dale Oldenkamp.

The claimant was discharged when it was determined that he had taken a company vehicle on a personal trip to the state of North Carolina without informing the company or receiving personal approval to do so. Prior to leaving on the trip the claimant had received a specific inquiry from his immediate supervisor as to whether the company vehicle would be utilized for the trip. Mr. Oldenkamp at the time was emphasizing to the claimant that the use of a company vehicle for a personal trip of that nature would not be appropriate. Although Mr. Johnson indicated that he would not be using the company vehicle for the trip, he nevertheless did so without informing the company or receiving any approval from his supervisor or any other management individual.

It is the claimant's position that because company policy allows employees to use company vehicles for reasonable non business driving, he was, therefore, not in violation of the rule.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes the claimant was discharged for misconduct in connection with his work. It does. The evidence in the record establishes that the company has a policy which limits the personal use of company vehicles to "reasonable non business driving." The evidence establishes that although the claimant had been previously warned and was aware of the policy, he nonetheless utilized a company vehicle for a personal trip of over 2,500 miles without informing the company or receiving specific authorization to do so. The evidence establishes that prior to leaving on the trip, the claimant's immediate supervisor had made an inquiry regarding the claimant's intention with respect to the company vehicle reminding, in effect, that the claimant should not consider utilizing the company vehicle for a personal trip of that nature. Although the claimant was reminded of the company policy and had been previously warned, he nonetheless violated the policy by taking the company vehicle on an extended personal trip without authorization. The administrative law judge concludes based upon the evidence in the record that the claimant's conduct was in willful disregard of the employer's interests and standards of behavior and thus disqualifying.

The administrative law judge is mindful that it is the claimant's position that he does not believe he violated the "reasonable use" policy by taking the vehicle on the extended trip. The administrative law judge finds the claimant's position to strain credibility.

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.

For the reasons stated herein, the administrative law judge finds that the claimant was discharged for misconduct. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated November 26, 2007, reference 01, is hereby affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs