

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**BRET S SACORA**  
Claimant

**APPEAL NO: 18A-UI-11813-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STAR EQUIPMENT LTD**  
Employer

**OC: 11/18/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 30, 2018, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 27, 2018. The claimant participated in the hearing. Jon Holle, Service Manager and Adri Turner, Office Clerk, participated in the hearing on behalf of the employer. Employer's Exhibits 1 and 2 were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time repair mechanic for Star Equipment from October 18, 2018 to November 16, 2018. He was discharged for smoking while dumping oil into a used oil container.

On November 15, 2018, the claimant stepped outside the building at 9:48 a.m. and dumped used oil or diesel fuel into a storage container while smoking a cigarette (Employer's Exhibit 1). There is a No Smoking sign posted on the door of the building and the claimant thought it referenced smoking in the building itself rather than the area outside the building. Mechanic John Eaker observed the claimant smoking outside the building and reported it to Office Clerk Adri Turner who contacted Service Manager Jon Holle. Mr. Holle was not on the premises but spoke to General Manager Steve Bean and they decided to send the claimant home for the remainder of the day while they considered what disciplinary action to take. Mr. Holle met with the claimant November 16, 2018, and terminated his employment for smoking near the oil storage container.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant failed to exercise good judgement in smoking outside near the used oil container on the employer's premises, this was an isolated incident of poor judgement on the part of the claimant. It was dangerous to smoke around the used oil and the claimant placed himself as well as his co-workers at risk by smoking in that location. However, the claimant,

believed the “No Smoking” sign on the door to the building applied to inside the employer’s premises rather than outside. The employer chose to terminate the claimant’s employment rather than issue a simple warning that could have rectified his behavior. Under these circumstances, the administrative law judge finds the claimant’s behavior was an isolated incident of misconduct and as such does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The November 30, 2018, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs