

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID J BRUNTZ
Claimant

APPEAL NO. 12A-UI-02920-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILSON TRAILER CO
Employer

OC: 12/18/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 21, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 6, 2012. The claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of David Bruntz and Claimant's Exhibits A and B.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures grain trailers. The claimant worked at Sioux City Plant #2. He was hired at the end of June 2010. His job was backup operator. He worked the day shift. His last day of work was February 8, 2012. He was terminated on February 14, 2012.

The incident that led to the claimant's termination occurred on February 7, 2012. The claimant was building trailers and he forgot to change the program to make a different sized trailer side. He was able to salvage the side and the company lost no money as a result of the mistake. The claimant was given a write-up with a three-day suspension, which was served on February 9, 2012; February 10, 2012; and February 13, 2012. When the claimant came back to work on February 14, 2012, he was terminated.

The claimant's job performance reviewed from June 21, 2011, and December 12, 2011, showed that the claimant did his job in a satisfactory manner. (Exhibits A and B)

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The definition of misconduct specifically excludes errors in judgment or discretion or simple negligence in an isolated situation. The employer has the burden of proof to show misconduct.

There is no evidence of disqualifying misconduct in this record. The claimant made a simple mistake by failing to push a button to change a program. There is no evidence of willful or deliberate action on the part of the claimant to breach a duty to the employer. The employer did not participate in the hearing and its reasons for terminating the claimant are unknown. The claimant was able to salvage the piece that had been cut incorrectly and there was no monetary loss to the employer. Since there is no evidence of misconduct in this record, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 21, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw