

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARRIN THOMAS
Claimant

APPEAL NO. 08A-UI-08091-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

B T INC
Employer

**OC: 08/10/08 R: 12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Darrin Thomas (claimant) appealed a representative's September 3, 2008 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with B T Inc (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 September 24, 2008. The claimant participated personally. The employer was represented by John Fatino, Attorney at Law, and participated by Tricia Asher, Dispatcher; Garry Dutcher, Terminal Manager; and Sandy Loney, Director of Human Resources.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on January 24, 2007, as a full-time over the road truck driver. The claimant had a history of arguing.

The employer issued the claimant a written warning on August 27, 2007, for arguing and failure to follow instructions. The employer notified the claimant that further infractions could result in termination from employment. On January 15, 2008, the employer issued the claimant a verbal warning for being argumentative and abusive when the claimant did not want to complete forms and provide information for a required annual certification for the Department of Transportation. On April 24, 2008, the employer issued the claimant a verbal warning for delivering six hours late because he took more than the required ten hour break. The employer issued the claimant a verbal warning on July 31, 2008, for failure to secure the employer's equipment in an approved method. The claimant left equipment at a truck stop without a locking mechanism. On August 8, 2008, the employer issued the claimant a verbal warning for delivering a load late. He argued with the customer and refused to pay the \$75.00 late fee.

On August 12, 2008, the dispatcher told the claimant that he needed to haul a load with three drops. The claimant was unhappy, became loud, and spoke quickly. The dispatcher could not get in a word. The claimant hung up on her. The dispatcher reported the claimant to the employer. The employer terminated the claimant.

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. 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 September 3, 2008 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw