

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW L HUBBS

Claimant

DES MOINES HEATING AND COOLING

Employer

APPEAL NO: 11A-UI-02797-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/14/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 8, 2011, reference 01, that held he was discharged for misconduct on January 10, 2011, and benefits are denied. A telephone hearing was held on March 30, 2011. The claimant, and his witness, Robert Johnson, a former employee, participated. Lori Fontana, Office Manager, and Brad Hudson, Service Manager participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time service technician on July 21, 2010, and last worked for the employer on January 10, 2011. The claimant was required to have a valid driver's license for his job.

Claimant was arrested for OWI while driving a personal vehicle on August 19, 2010. Claimant notified the employer of his arrest. Claimant had a permit to drive until his license was suspended on November 4. The employer assigned claimant to an installation crew that did not require him to drive. Claimant let the employer know he would be eligible for a driver work permit on or about January 14, 2011. Claimant contacted his personal auto insurance carrier (Farmers Insurance) about his driver's license, and this insurance carrier is the same one that covers the employer commercial vehicles. Although the insurance company had notified the employer it would not insure claimant to drive an employer vehicle, it did advise claimant the issue would be reviewed if he obtained a work permit to drive.

When claimant's license was suspended, it moved him to an installation crew that did not require him to drive. The claimant continued work installation and provide service technician training to employee Johnson up to January 10, 2011. When the employer's work became

slow, it wanted him to return to service work, but he did not have a work permit to drive. The employer terminated his employment for lack of a valid driver's license.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish claimant was discharged for a current act of misconduct in connection with employment on January 10, 2011.

Claimant's act of misconduct is violating a state OWI law that caused his license to be suspended on November 4, 2010. The suspension rendered claimant uninsurable. However, the employer moved claimant to a different job doing installation(s) and service training for another employee that lasted more than two months. The employer chose not to wait to see if claimant could obtain a work permit that would allow him to drive, because there was insufficient other work available than the service work for which claimant had been hired.

When the employer discharged claimant on January 10, 2011 for his driver's license suspension on November 4, it was no longer a current act of misconduct that would disqualify claimant from receiving unemployment benefits.

DECISION:

The department decision dated March 8, 2011, reference 01, is reversed. The claimant was not discharged for a current act of misconduct on January 10, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css