

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-05599-ET
OC: 04-25-04 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 10, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 21, 2004. The claimant participated in the hearing with Attorney Cynthia Rybolt. Ron Vose, Sr., President, participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

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 trailer mechanic for Vose Moving Company from November 4, 2002 to April 26, 2004. On April 22, 2004, the claimant signed a safety certificate indicating he completed an inspection of a trailer on that date. When the employer discovered April 26, 2004, that various lights and signals on the trailer were not working and 60 percent of the brakes were out of adjustment and the trailer could not be used as scheduled, it terminated the claimant's employment. The employer's policy states, "To ensure uniformity of rule enforcement, the following guidelines of action will be followed for disciplinary problems:" (Claimant's Exhibit A). The policy further states a first offense would result in an employee consultation warning; a second offense would result in a written warning; a third offense would result in a final written warning and the fourth offense would result in a recommendation for discharge by the supervisor (Claimant's Exhibit A). The employer had talked to the claimant about performance problems in the past but did not document any of the incidents and did not issue any warnings to the claimant. The claimant took a multi-meter and other tools from the employer's premises without asking permission April 22, 2004. The employer did not realize the tools were gone until after the termination occurred, at which time it contacted the police department and the claimant returned the tools.

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:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the administrative law judge did not find the claimant's testimony on any of the issues presented by the employer to be credible, the employer could not state specifically when any previous incidents occurred and more importantly it did not follow its disciplinary policy stating employees would receive a verbal, written and final written warning prior to a recommendation for termination. The employer's handbook specifically states that the policy is in place "to ensure uniformity of rule enforcement" and that the "guidelines of action will be followed for disciplinary problems." Although the claimant did not provide a reasonable explanation for signing off on the trailer inspection report without actually completing all of the required maintenance, the employer has not established sufficient justification for failing to follow its disciplinary policy and it was not aware that the claimant removed equipment from the employer's premises without permission at the time it made the decision to terminate the claimant's employment. Consequently, for the above-stated reasons the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

DECISION:

The May 10, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjf