

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY M RUBEY
Claimant

APPEAL NO. 09A-UI-14707-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELDER IMPLEMENT CO INC
Employer

**Original Claim: 08/30/09
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Jeffrey M. Rubey filed a timely appeal from an unemployment insurance decision dated September 24, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held October 29, 2009, with Mr. Rubey participating and being represented by Tim Roberts, attorney at law. Exhibits A through C were admitted into evidence on his behalf. General Aftermarket Manager Pat McCrabb and Human Resources Manager Dave Dahms participated for the employer, Elder Implement Company, Inc.

ISSUE:

Was the claimant discharged for disqualifying misconduct.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jeffrey M. Rubey was employed by Elder Implement Company, Inc. from March 2, 2008, until he was discharged September 2, 2009. The final incident leading to the discharge occurred at least a week to ten days prior to the discharge. Mr. Rubey purchased a John Deere lawnmower from a competitor of the employer. He was not required to purchase from the employer. He did not advertise the fact that he had purchased from another dealer, but he did answer truthfully when asked by the employer's salesman who had suggested that he make his purchase elsewhere.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8).

The evidence persuades the administrative law judge that the employer knew of the offending purchase at least a week prior to the discharge. The administrative law judge concludes that the final incident was not current at the time of the discharge. Furthermore, the employer has not established that the claimant violated any company policy by purchasing from a competitor. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated September 24, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw