

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK B JACKSON
Claimant

APPEAL NO. 07O-UI-04629-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J INC
Employer

**OC: 01/14/07 R: 03
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 1, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 23, 2007 by remand order of the Employment Appeal Board dated April 26, 2007. Claimant participated personally. Employer participated by Gwen Landin, Facility Manager, and Ken Maier, General Manager. Exhibits One and A were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was hired on June 28, 2006, as a full-time maintenance employee. The employer issued the claimant written warnings on August 24 and September 19, 2006, for failure to follow instructions. As part of the September warning the claimant received a two-day suspension. The employer warned the claimant both times that further infractions could result in his termination from employment.

On January 13, 2007, the claimant was leaving work as a light snow was falling. All the gas pumps were occupied with customers. At least twelve customers were pumping gas. The claimant drove around the customers circling them and doing donuts around the gas pumps. The customers were shouting for the claimant to stop and calling him an idiot. Some told him to stop because children were near. The facility manager went outside and instructed the claimant to stop. The claimant knew she told him to stop but performed another donut. He then left the premises.

On January 16, 2007, the employer terminated the claimant for repeatedly failing to follow instructions.

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.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning safety. Claimant was warned concerning this policy.

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). Acting in an unsafe manner is misconduct. Spinning a vehicle in circles in the presence of customers created a potentially life threatening situation. The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its

employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The decision of the representative dated March 1, 2007, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. No overpayment has been established as no unemployment has been paid.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw