

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEHO JUSIC
Claimant

APPEAL NO: 15A-UI-02081-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHARLES GABUS FORD INC
Employer

OC: 01/18/15
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Meho Jusic (claimant) appealed a representative's February 6, 2015 (reference 01) decision that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Charles Gabus Ford, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on May 11, 2015. The claimant participated in the hearing. Jackie Nolan, Employer's Unity representative, appeared on the employer's behalf and presented testimony from three witnesses; Lowell Dudzinsky, Mark Johnson, and Connie Connolly. Janja Pavetic Dickey served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on June 6, 2014. He worked full time as a lube technician. His last day of work was January 7, 2015. The employer discharged him on that date. The stated reason for the discharge was failing to follow instructions after prior warnings.

The employer had repeatedly instructed the claimant that he needed to have the feet of the hoist down before pulling a vehicle onto or off of the hoist. While some car models can easily clear the feet even if they are left up, other models will catch and cause damage. There had been damage to a vehicle in November 2014 when the claimant had left the feet up and the claimant had been specifically instructed then that he needed to make sure the feet were down. He had also received warnings in September and October for unrelated work performance issues.

On January 7, 2015, the claimant again damaged a car when the feet were left up on the hoist. He was reminded at that time again that he needed to ensure the feet were down, including through an interpreter, but he serviced three more vehicles that day where he did not ensure the feet were down. Even though no damage occurred to those other three vehicles, the employer concluded that because the claimant was not following the instructions he had been given, he should be discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's failure to follow the employer's instructions after multiple discussions shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's February 6, 2015 (reference 01) decision is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 7, 2015. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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