

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SCOTT C CHITWOOD**  
Claimant

**APPEAL NO. 13A-UI-08105-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALTER TRADING CORPORATION**  
Employer

**OC: 06/16/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Alter Trading Corporation (employer) appealed a representative's July 1, 2013 decision (reference 02) that concluded Scott Chitwood (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 4, 2013. The claimant participated personally. The employer was represented by Jackie Nolan, Hearings Representative, and participated by Stephanie Pimmel, Corporate Human Resource Manager, and Dennis Chenoweth, Supervisor.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 28, 2011, as a full-time operator. The claimant signed for receipt of the employer's handbook on November 28, 2011. The employer issued the claimant a written warning on August 27, 2012, for safety issues and property damage. On May 3, 2013, the employer issued the claimant written warning for failure to wear protective equipment. The employer notified the claimant that further infractions could result in termination from employment.

On June 14, 2013, the claimant left his work area at 11:15 a.m. to use the bathroom in the company trailer that also held the break room. He returned to work a few minutes later. At 11:45 a.m. he returned to the trailer to clean up for his lunch break. The work rules allow ten minutes to clean up for lunch. That day employees were having a special appreciation lunch. The claimant went to lunch with other employees.

Later that day the supervisor looked at video of the claimant's actions. He saw the claimant entering the trailer at 11:15 a.m. He saw the claimant leaving on a different camera at 11:55 a.m. The supervisor was unable to see the claimant in a specific work area on the video and assumed the claimant was in the trailer from 11:15 a.m. to 11:55 a.m. on June 14, 2013.

The camera does not show the claimant's entire work area. The claimant was working outside the camera's view. The employer terminated the claimant on June 14, 2013, for leaving his work area without permission on June 14, 2013.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because he was an eye witness to the events for which he was terminated. The employer gathered its information from what it viewed on the video.

**DECISION:**

The representative's July 1, 2013, decision (reference 02) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs