

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODERICK J FRITZ
Claimant

APPEAL NO. 08A-UI-08046-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN MACHINERY INC
Employer

**OC: 08/05/07 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Roderick J. Fritz filed a timely appeal from an unemployment insurance decision dated September 3, 2008, reference 03, that disqualified him for benefits. After due notice was issued, a telephone hearing was held September 23, 2008 with Mr. Fritz participating. The employer, Titan Machinery, Inc. did not respond to the hearing notice.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Roderick J. Fritz became employed by Titan Machinery, Inc. on May 29, 2008 when the employer purchased the business for which Mr. Fritz was already working. The employment ended with his discharge on July 10, 2008. Work was slow. Mr. Fritz had been sent home for a few days over the course of two weeks because of a lack of work. Other times while at work there was little for him to do. Shop Supervisor Bob Dobernecker discharged Mr. Fritz on July 10, 2008 saying that he had failed to tighten an oil filter on an engine. He did not show Mr. Fritz the engine in question. Mr. Fritz had not deliberately failed to tighten any filters and had received no prior discipline.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence 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. As noted above, the employer did not offer any evidence for this record.

Misconduct is most often found in deliberate actions contrary to the employer's interest. While it also may be found in repeated acts of carelessness or negligence, ordinary mistakes, especially a single ordinary mistake, is not sufficient to establish misconduct. The administrative law judge concludes that misconduct has not been established by the evidence in this record. Benefits are allowed.

DECISION:

The unemployment insurance decision dated September 3, 2008, reference 03, 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

pjs/pjs