

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES M LESLIE
Claimant

APPEAL NO. 09A-UI-11842-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINERIDGE FARMS LLC
Employer

OC: 07/12/09
Claimant: Appellant (1)

Section 96.5-2-a - Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 17, 2009, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 1, 2009. Claimant participated. Employer participated by John Anderson, human resources manager and Kim Knoll, general manager. The record consists of the testimony of John Anderson; the testimony of Kim Knoll; and the testimony of James Leslie.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case, Pineridge Farms, has a subsidiary called Foresure Transport. The claimant worked for Foresure Transport as a shag driver and wash bay attendant. He was hired on October 13, 2008, as a full-time employee.

The incident that led to the claimant's termination occurred on July 10, 2009. The claimant left a fully loaded trailer of meat in an unsecured lot. The refrigeration had been turned off. The employer could not find the load of meat and it was discovered on Saturday. Although the product was salvaged, the employer believed the claimant's action to be extremely irresponsible and the decision was made to terminate the claimant.

Two other incidents also played a role in the decision to terminate the claimant. On July 7, 2009, the claimant was given a written warning for backing a trailer into another vehicle and causing \$1,800.00 in damage. The claimant was also given a written warning on July 8, 2009, for causing \$1,200.00 in damage after hitting a trailer while turning a corner.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer or in repeated acts of carelessness or negligence. The employer has the burden of proof to show misconduct.

In this case, the evidence established that the claimant committed three separate acts of carelessness or negligence within a week. The first two incidents led to property damage and the claimant acknowledged that he was at fault. On July 10, 2009, the claimant left a 40,000 pound load of meat in a trailer without the refrigeration. Although he claims that he was told the trailer was empty, he did not check to be certain and left the trailer in the lot. The claimant's failure to account for this load had the potential to cause significant property damage.

An employer has a reasonable expectation that a worker will perform his job in a conscientious and responsible manner. Within one week, the claimant committed three acts of carelessness with the employer's property. This pattern of repeated carelessness constitutes a material breach of the claimant's duty to the employer. Benefits are denied.

DECISION:

The decision of the representative dated August 17, 2009, reference 02, is affirmed. 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.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs