

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NEALON D MARTI
Claimant

APPEAL NO. 09A-UI-15620-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

QUAD CITY SALVAGE AUCTION INC
Employer

OC: 09/13/09
Claimant: Appellant (2)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 7, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 18, 2009. Claimant participated. Employer participated by Annette Snyder, human resources consultant. The record consists of the testimony of Annette Snyder; the testimony of Nealon Marti; and Employer's Exhibits 1-9.

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 sells salvage title vehicles on line. The claimant was hired on June 4, 2007, as a yard worker. At one point he was promoted to yard manager but demoted back to yard worker on May 20, 2009, due to attendance problems.

The incident that led to the claimant's termination occurred on September 15, 2009. The claimant had received permission to leave early that day. The claimant had been operating a gas buggy, a device that siphons gasoline from the tanks of the salvaged vehicles. When the time came for the claimant to leave work, the siphoning had not been completed. The claimant asked two co-employees to finish the job. As the claimant was leaving, both employees were heading toward the gas buggy.

The claimant was terminated for what the employer deemed to be a safety violation, namely leaving the gas buggy attached to a vehicle. The claimant was terminated on September 16, 2009.

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 in repeated acts of carelessness or negligence. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 659). The employer has the burden of proof to show misconduct.

After carefully considering the evidence in this case, the administrative law judge concludes that the employer has failed to show misconduct. The claimant's un rebutted testimony was that he told two co-employees about the gas buggy and that those two employees agreed to finish the job. They were heading toward the gas buggy when the claimant left for the day. He had been given permission to leave early that day by the employer. The claimant's actions did not result in any property damage or personal injury. While the claimant's actions might, under some circumstances, constitute a safety violation, there is no evidence that a safety violation occurred on September 14, 2009. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated October 7, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs