

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A DOUGLAS
Claimant

APPEAL NO. 14A-UI-02517-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARONA CORPORATION
Employer

**OC: 02/09/14
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated February 26, 2014, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on March 27, 2014 by telephone conference call. The claimant participated personally. Employer participated by Doug Hervliska, assistant general manager, and Sarah Charlier, human resources business partner. The record consists of the testimony of Sarah Charlier; the testimony of Doug Hervliska; the testimony of Michael Douglas; and Employer's Exhibits 1-5.

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 does sales and leasing of furniture. The claimant worked at the store located in Burlington, Iowa. The claimant was hired on August 29, 2012. He was a full time product technician. His last day of work was February 8, 2014. He was terminated on February 8, 2014.

The incident that led to the claimant's termination occurred on January 30, 2014. One of the employer's trucks was at the repair shop. The repairs were complete and the claimant was told to get the truck. The claimant did not know that the truck had been parked over a boulder. It had snowed and the boulder was not visible. The claimant pulled the truck forward and the boulder hit the truck, causing damage of \$3,935.14. The claimant was terminated because he had not done a walk around prior to starting the truck and because the employer deemed the amount of property damage to be significant.

The claimant had received prior warnings for two accidents that occurred in January 2013 and January 2014. The claimant was not the driver in either incident.

REASONING AND CONCLUSIONS OF LAW:

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. The legal definition of misconduct excludes simple negligence and errors of discretion or judgment. 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. 1988) The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The greater weight of the evidence showed that the claimant was not discharged for a current act of misconduct. The accident that took place on January 30, 2014, was not due to misconduct on the part of the claimant. The claimant credibly testified that he did not park the truck on top of the boulder and he had not been told that the truck was on top of a boulder. The snow obscured the boulder. At best the claimant was guilty of simple negligence or an error in judgment. This is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated February 26, 2014, reference 01, is reversed Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs