

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT CLOE
Claimant

GREEN RESOURCE MANAGEMENT INC
Employer

APPEAL 15A-UI-08909-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/05/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 29, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 26, 2015. Claimant participated. Employer participated through owner, Alex Benskin and was represented by James Gilliam, Attorney at Law.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a shredding truck route driver requiring a commercial driver's license (CDL) and was separated from employment on May 5, 2015, when he was suspended by text message for two weeks. His employment status was pending further consideration and decision on the text message incident on that date. He was discharged 30 days later after he was unwilling to resolve personal issues including participating in a rehabilitation program to stop smoking marijuana that caused his work ethic to deteriorate. During a text message conversation he said he was not willing to do that but wanted the employer to create a new customer service position for him so that he would not have to drive. The employer was unable to do that and ended the employment. A drug-free workplace required of all employees for National Association for Information Destruction (NAID) certification. Benskin received a complaint 12 days earlier from a law firm that their secretary saw him drop a marijuana pipe on the floor at the firm reception area while he was there on company business. Claimant later admitted to it was his pipe.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Professional drivers, particularly those that drive large and/or heavy vehicles, reasonably have a higher standard of care required in the performance of their job duties to ensure public safety. That duty is evident by special licensing requirements. The employer is charged under both federal and state law with protecting the safety of its employees and the general public by ensuring employees follow safety laws while operating a company vehicle. It has presented substantial and credible evidence that claimant was acting against the best interests of the employer and the safety of the general public when he admitted in writing to being high while in possession of and/or driving the employer's vehicle. This is disqualifying misconduct even without prior warning. Because the claimant acknowledged, even boasted, about his intoxication, the employer was not obligated to order a drug screen. His latent denial is not convincing considering the customer complaint that claimant dropped a pipe in its office 12 days earlier.

DECISION:

The July 29, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until

such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css