

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL GARDNER**  
Claimant

**APPEAL NO: 13A-UI-13762-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**O'REILLY AUTOMOTIVE INC**  
Employer

**OC: 11/17/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 9, 2013, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 9, 2014. The claimant participated in the hearing. Jason Reel, Store Manager and Tim Mason, District Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time retail service specialist for O'Reilly Automotive from February 24, 2008 to November 17, 2013. He was discharged for cash handling issues.

The claimant received a written warning October 1, 2013, because he let a customer take a part the customer said he did not have with him but was not working and was under warranty without making the customer produce the part at the store as required by the employer's policy. On October 18, 2013, the claimant received a written warning because his drawer was short \$5.00 October 9, 2013, and short \$5.18 October 11, 2013. On November 6, 2013, the claimant received a final written warning after another wholesale customer called the store November 1, 2013, and the claimant was supposed to build a part and deliver it to the customer and when the customer called after 30 minutes looking for the part and a co-worker could not find it the claimant admitted he forgot to build it. The employer terminated the claimant's employment November 17, 2013, after his drawer was over \$10.20 November 15, 2013; and short \$5.00 November 16, 2013.

The claimant was diagnosed with primary progressive aphasia, which is a form of dementia, September 23, 2013, and notified the employer of his condition September 29, 2013. His condition greatly impacts his ability to understand and remember information.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). In this case, given the claimant's diagnosis, there was absolutely no willful or intentional misconduct on his part. Prior to October 1, 2013, the claimant's last warning occurred February 16, 2009, which leads to the conclusion the claimant's illness was more likely than not the cause of his errors, removing any thought of willful or intentional misconduct. It appears that as soon as the new store manager learned of the claimant's diagnosis he started writing him up to remove him from employment through the employer's progressive disciplinary policy, as is the employer's right. Without willful or intentional misconduct, however, benefits must be allowed.

**DECISION:**

The December 9, 2013, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs