

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL SAEY
Claimant

APPEAL NO: 06A-UI-11594-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-1 AUTO SALES
Employer

OC: 11/05/06 R: 03
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Daniel Saey (claimant) appealed an unemployment insurance decision dated November 28, 2006, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from A-1 Auto Sales (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 19, 2006. The claimant participated in the hearing with Tracy Harshman but disconnected before the hearing was completed. The administrative law judge redialed the claimant's number only to receive voicemail and left a message. The claimant never called back and the hearing was completed without his participation. The employer participated through Dave Benderson, President and Keith Platten, Investor. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time lot attendant and salesperson from July 7, 2006 through October 25, 2006 when he was discharged for conduct not in the best interest of the employer. The employer is not at the facility during the day so there was no one to supervise the claimant. He was rude to customers. One customer was there to take a test drive and instead of working, the claimant was yelling and using profanity on the phone in a personal call. This customer and two others complained to the employer about the claimant's rude behavior. He missed work on October 2, 2006 because he was intoxicated and arrested for a parole violation. During the second week of October 2006, the employer discovered the claimant made ten personal purchases on the employer's credit card. The claimant paid the employer for some of these purchases but not all of them. The claimant owed the employer money and signed over a car title on October 10, 2006 in payment of the debt. The claimant then applied for a duplicate title on October 19 and when the employer applied for the title on October 23, he learned of the claimant's fraudulent actions. The claimant was late for work on

October 21, 22 and 23 and left early on October 23 and 24. He was drinking alcohol at work on the morning of October 25. He kept a cup on the workbench in the shop and it smelled like beer that morning. He was subsequently discharged and on that same day, the claimant arrived at the employer's facility with the police and removed the car he had previously signed over to the employer.

The record closed at 1:27 p.m. The claimant's witness, Tracy Harshman, called the Appeals Section at 1:47 p.m. but hung up before the call was transferred to the administrative law judge.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for conduct not in the best interest of the employer. He missed a lot of work, worked while under the influence of alcohol, and was rude to customers. He also fraudulently used the employer's credit card for personal use and signed over a car title to the employer for money owed and then fraudulently applied for and received a duplicate title, which allowed him to remove the car from the employer's property. The claimant did not stay on the telephone line to finish the hearing and did not provide any testimony but the employer's evidence is found most credible as the claimant's conduct when participating in the hearing was rude and offensive at best. He repeatedly said derogatory remarks, yelled at and used profanity towards Tracy Harshman before going on record and while on record during the hearing. His conduct during the hearing appeared to replicate the same type of conduct for which he was discharged. The claimant's actions were a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated November 28, 2006, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css