

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TODD A FISHNICK**  
Claimant

**APPEAL NO. 13A-UI-03294-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NORTH END AUTO WRECKING INC**  
Employer

**OC: 02/17/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the representative's decision dated March 15, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice was issued, a hearing was initially scheduled for April 17, 2013. The claimant's phone died before the hearing could be completed. The hearing was rescheduled for May 17, 2013. The claimant had a working phone at that time. The claimant participated personally. The employer participated by Scott Kunde, manager/owner; Deven Kunde, parts manager; Roger Kunde, owner; Jodi Kunde, office manager; and Bob Thill, shop manager. The record consists of the testimony of Roger Kunde; the testimony of Scott Kunde; the testimony of Deven Kunde; the testimony of Jodi Kunde; the testimony of Bob Thill; the testimony of Todd Fishnick; and Employer's Exhibits 1-23.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer buys wrecked cars and trucks and dismantles the vehicles. Parts that are usable are salvaged from these vehicles and sold. The claimant was hired on February 8, 2010. He was a full-time dismantler. He was terminated on February 19, 2013.

The incident that led to the claimant's termination occurred on February 17, 2013, or February 18, 2013. A brand new tire that had been salvaged from a truck had a stab through the sidewall. When the employer discovered the slash, it was determined that the claimant had dismantled that particular vehicle. The employer also found a knife on the claimant's work bench that exactly matched the hole in the tire.

The claimant's work was excellent when he was first hired but began to deteriorate over the prior year. He received a total of 13 write-ups concerning carelessness. On three occasions he was caught smoking near a fuel pump, which is a safety concern. He refused to keep his bay clean. He would not assist when asked to set "trannies" on a pallet. The claimant's attitude changed and he no longer did satisfactory work.

**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. While isolated acts of negligence will not be misconduct, wanton carelessness is disqualifying misconduct. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The findings of fact show how the administrative law judge resolved the credibility issues in this case. The most reasonable inference from the evidence is that the claimant's job performance began to steadily decline, particularly over the last year. The claimant became increasingly hostile toward the employer. This hostility was manifested in poor attitude; carelessness in job performance; refusal to perform simple tasks such as cleaning his work area and assisting other employees; and finally

in an act of sabotage. The claimant's testimony underscored this hostility. The claimant was clearly capable of performing satisfactory work but deliberately chose to work in a careless and unsafe manner. This a material breach of his duties to the employer, which is misconduct. Benefits are denied.

**DECISION:**

The unemployment insurance decision dated March 15, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs