

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN C MESSNER
Claimant

APPEAL NO. 13A-UI-13418-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHNSRUD TRANSPORT INC
Employer

OC: 11/03/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 2, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 30, 2013. The claimant did participate. The employer did participate through Jon Osborn, Safety Director and (representative) Douglas Dutter, Human Resources Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job 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 regional over-the-road driver full time beginning May 14, 2012 through November 6, 2013 when he was discharged. The claimant was entering Canada with a load on October 30, 2013 when the customs agent asked him if he had anything to declare. The claimant had a stun gun in his truck, (which the employer allowed) and failed to disclose to the customs agent that he had the stun gun. When the agent found the stun gun, the stun gun was confiscated, and the tractor and trailer were impounded. The claimant was ordered to turn over his permit book, tractor keys and passport to the customs agent while they completed a more complete search and finished processing his paperwork. The claimant then told the customs agent that he needed to return to the truck for something and using the spare truck key in his pocket took the truck and trailer and crossed the border back into the US.

The claimant said he fled because he feared arrest. The claimant had taken loads to Canada previously and knew he was required to comply with Canadian law while entering the country. The employer sent another driver up to the border to deliver the load and paid a \$500.00 fine. The employer was allowed to have the load enter Canada after paying the fine. The result would have been the same for the claimant had the claimant not fled. He simply would have been fined; the stun gun confiscated and then would have been allowed to deliver the load. An employer has a right to expect employees to follow the Canadian law when they are dispatched to Canada. There was no reason for the claimant not to let the custom agent search the trailer,

the contents were not his. Simply fleeing because an employee does not like the questions or the way questions are asked by a customs agent guard is not an acceptable excuse for breaking the law. The employer discharged the claimant because he failed to follow the law in Canada while delivering their load.

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 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The employer has a right to expect employees to follow the law. The claimant had taken loads to Canada on many prior occasions. The contents of the trailer were not his and there was no reason not to let the customs agent search the truck and trailer. The claimant knew that he was to be questioned when he surrendered his passport, the keys and his paperwork. The claimant then fled with the employer's property back across the border. The claimant's actions amount to conduct not in the employer's best interest and are sufficient misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The December 2, 2013, (reference 01) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs