

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT J BENGE
Claimant

APPEAL NO. 17A-UI-11580-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THEISENS INC
Employer

OC: 10/08/17
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Scott Benge (claimant) appealed a representative's October 31, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Theisens (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 4, 2017. The claimant was represented by Samuel Aden, Attorney at Law, and participated personally. Jill Dale, the claimant's significant other, observed the hearing. The employer participated by Dan Connolly, Risk Management Loss Prevention Manager, and Heidi Bergfeld, Human Resources Administrator. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on January 9, 2012, as a full-time automotive service person. The claimant signed for receipt of the employer's handbook on January 29, 2012. He signed for an updated online version of the handbook on September 20, 2016.

The claimant suffered a work-related injury to his bicep and shoulder on May 14, 2017. He returned to work with restrictions. In October 2017, the claimant was restricted to no lifting over five pounds with his left arm and no use of his right arm. On October 6, 2017, the claimant brought in a tire that needed to be repaired and left it by the employer's back door before he started work. A co-worker fixed the tire during the claimant's workday. Before he left for the day, the claimant put the invoice for payment on a clipboard. He did not take the invoice to a register and pay for the work that was done. At the end of his shift, his significant other arrived at the shop door and the two loaded the repaired tire in the vehicle along with the employer's floor jack. The claimant thought he asked the employer if he could borrow the jack but the employer did not give the claimant permission to take the jack from the property.

On October 7, 2017, the claimant was not scheduled to work. He entered the employer's property through the shop door and searched for the invoice. When the claimant could not find the invoice, he asked the manager for the invoice. The claimant did not mention wanting to pay for the tire until the employer asked the claimant if he took the tire without paying for it. The claimant said he "screwed up" and he did not have the money on October 6, 2017. The claimant paid for the tire on October 7, 2017. On October 11, 2017, the employer questioned the claimant as part of its investigation. It terminated the claimant on October 11, 2017, for theft of company property.

The claimant filed for unemployment insurance benefits with an effective date of October 8, 2017. On November 1, 2017, the claimant's doctor issued a note stating the claimant cannot lift over two or three pounds. He must limit his repetitive and overhead lifting.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally took the tire without paying for its repairs. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's October 31, 2017, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs