

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN C MCDONALD
Claimant

APPEAL NO. 08A-UI-10159-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JIM HAWK TRUCK-TRAILERS INC
Employer

**OC: 08/24/08 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

John C. McDonald filed a timely appeal from an unemployment insurance decision dated October 20, 2008, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held November 21, 2008 with Mr. McDonald participating. The employer did not provide a telephone number at which any witnesses could be contacted.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, finds: John C. McDonald was employed by Jim Hawk Truck-Trailers, Inc. from January 2006 until he was discharged by Parts Manager Richard Hash on August 14, 2008. He last worked in sales and delivery for the parts department.

Mr. McDonald used a company vehicle for daily routes of 300 to 350 miles. Before leaving on the route he would fill a five gallon jug with gasoline so that he would need to stop at a commercial gas station before completing the route. He did not use any of the gasoline for personal purposes. He was discharged because of suspicion that he was doing so.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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 proof. See Iowa Code section 96.6-2. As noted above, the employer did not participate in the hearing. The claimant's credible sworn testimony was that he used the gasoline for company, not personal purposes. Based upon this evidence, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated October 20, 2008, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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