

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**VERNON M OAKLAND
PO BOX 95
CLERMONT IA 52135**

**IA DEPT OF CULTURAL AFFAIRS
TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283**

**Appeal Number: 05A-UI-02489-H2T
OC: 01-23-05 R: 04
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 2, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 28, 2005. The claimant did participate. The employer did participate through Shaner Magalhaes, Division Administrator. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a maintenance worker, full time, beginning November 13, 1987 through January 14, 2005 when he was discharged. The claimant was discharged for theft from the employer. On October 9, 2004 the claimant went to a local gas station and put 5.58

gallons of gas into his own personal vehicle. This was witnessed by Jo Ann Bishop, a citizen who overheard the claimant tell the clerk at the gas station to bill the charge for the gas to Montauk, a historical site for the state that employed the claimant. Ms. Bishop notified Mr. Magalhaes of this situation and further clarified and noted what she observed in a series of e-mails sent to Mr. Magalhaes and included in the record. The claimant did not put gas in gas cans on October 9, as Ms. Bishop looked in the back of his pickup truck and saw no gas cans there. The claimant admits that he never had permission to put gas in his personal vehicle and have it billed to the state. The clerk for the gas station has verified that on numerous occasions the claimant put gas in his personal vehicle and asked for it to be billed to the state. The claimant was interviewed by Mr. Magalhaes in November and denied ever putting gas in his personal vehicle and having it billed to the state.

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.

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 claimant argues that Ms. Bishop and the gas station clerk, Ms. DelaRosa, have formed a conspiracy to get him fired so that Ms. Bishop can have his job. Mr. Magalhaes credibly testified that Ms. Bishop has not been hired to replace the claimant. No evidence indicates Ms. Bishop is at all interested in the claimant's former job. The claimant's argument is not persuasive. The administrative law judge is persuaded that the claimant has manufactured the conspiracy theory in an attempt to cover his theft of gasoline from the employer. The statements of Ms. Bishop and Ms. DelaRosa convince the administrative law judge that the claimant did in fact put gas in his own personal vehicle and have it billed to the state for payment. Theft from the employer is always misconduct sufficient to disqualify the claimant from receipt of unemployment insurance benefits. Here the employer has established that the claimant committed theft. Benefits are denied.

DECISION:

The March 2, 2005, 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.

tkh/kjf