

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSE GREEN
Claimant

APPEAL NO. 11A-UI-07379-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOTAL DETAILING AUTO SPA LLC
Employer

OC: 05/01/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 27, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 27, 2011. Claimant participated. Employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Jesse Green.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer does car washes and detailing. The claimant was a part-time car wash attendant. He was hired in January 2011. He was terminated on or about May 5, 2011. The reason for his termination is that he was involved in an accident. The claimant was backing a car out of the car wash and hit the passenger door of a customer's vehicle that was turning the corner at approximately 25 to 30 miles per hour. The claimant had checked both blind spots before backing the car out and did not see anyone coming.

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 leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion or simple acts of negligence in isolated situations. The employer has the burden of proof to show misconduct.

There is no evidence of misconduct in this record. The claimant was involved in an accident at work. This accident occurred while the claimant was backing out a car from the car wash. He testified that another car came around the corner at approximately 25 to 30 miles per hour and that he did not see it. The most reasonable inference from this testimony is that the claimant was at best negligent in failing to see the car. It is also entirely possible that the customer was driving too fast for conditions. The employer did not participate in the hearing and the reason or reasons for the termination are not known. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's decision dated May 27, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw