

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY L DAUGHERTY
Claimant

APPEAL NO. 09A-UI-01304-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AEROTEK INC
Employer

OC: 12/14/08
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Troy L. Daugherty filed a timely appeal from an unemployment insurance decision dated January 26, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held February 9, 2009 with Mr. Daugherty participating. Tech Recruiter Lindsey Meeker participated for the employer, Aerotek, Inc. The record was held open for documents to be submitted by the claimant. The documents were submitted to the employer for a response, but the employer did not respond. On March 9, 2009 the administrative law judge closes the record and proceeds to issue his decision. The documents submitted by the claimant are included in the record of this hearing as Exhibit A.

ISSUE:

Was the claimant discharged for misconduct?

FINDINGS OF FACT:

Troy L. Daugherty was employed as a general laborer by Aerotek, Inc. from November 23, 2007 until he was discharged on or about December 14, 2008. Mr. Daugherty was injured on the job on December 11, 2008. He was replaced on his assignment at General Mills because of the injury.

REASONING AND CONCLUSIONS OF LAW:

The first step in analyzing this evidence is to characterize the separation. The employer maintained that Mr. Daugherty stopped reporting for work. Mr. Daugherty maintained that Ms. Meeker called him on December 13 to say that he was “fired.” The evidence persuades the administrative law judge that the employment ended because Mr. Daugherty was replaced after being injured on December 11, 2008. The separation is better characterized as a discharge.

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. The greater weight of evidence persuades the administrative law judge that Mr. Daugherty became unemployed because he was replaced on the assignment before he could return to work following the injury. The evidence does not establish job abandonment or excessive unexcused absenteeism. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated January 26, 2009, 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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