

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMSUD ALAGIC

Claimant

APPEAL NO. 08A-UI-10315-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

GABUS AUTOMOTIVE INC

KIA OF DES MOINES

Employer

**OC: 09/21/08 R: 02
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 24, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 25, 2008 in Des Moines, Iowa. Claimant participated through interpreter Samir Dzaferagic. Employer participated through Dash Fitz.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time detailer from August 13, 2007 through September 23, 2008 when he was discharged because a used maroon vehicle was not cleaned correctly and the detail was not complete because there were bugs remaining on the mirrors, a stain on the seat, and the carpets were wet. Claimant argued that he had only cleaned one new white vehicle that day but the detailed vehicles are tracked by stock number. Employer had warned him in writing on September 27, 2007 after he said he was finished detailing a 2003 Ford Ranger but the dog hair was not removed and the vehicle was not buffed. The warning on October 17, 2007 applied to another employee. On January 17, 2008 employer warned him the detail was not completed on a new vehicle because plastic still in it and the wax was not applied correctly. On May 13, 2008 employer warned claimant about his job performance after it found that cup holders, the headliner (ceiling panel) and the area between the seats were dirty. He was given a suspension and returned to work on May 19. The May 29, 2008 warning was related to speeding in the parking lot and not job performance. Claimant acknowledged his signature on each of the warnings and his wife interpreted the warning meeting for him on May 13. Although claimant was a hard worker and did perform his job to employer's expectations for periods of time, he also worked too fast and did not pay attention to details in the performance of his job duties that resulted in incomplete detail jobs.

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 § 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995).

Claimant's repeated failure to adequately and fully perform his job duties after having established the ability to do so and after having been warned about failing to complete the vehicle detailing amounts to carelessness in the performance of his job that rises to the level of disqualifying misconduct. Benefits are denied.

DECISION:

The October 24, 2008, 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs