

**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**

**CRAIG MILES
PO BOX 36102
DES MOINES IA 50315-0310**

**C & C REALTY LTD
PO BOX 6008
DES MOINES IA 50309**

**Appeal Number: 06A-UI-06135-B
OC: 05/14/06 R: 02
Claimant: Respondent (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 for Misconduct

STATEMENT OF THE CASE:

C & C Realty (employer) appealed an unemployment insurance decision dated June 5, 2006, reference 01, which held that Craig Miles (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa, on June 29, 2006. The claimant participated in the hearing. The employer participated through Charles Colosimo, President and Andy Gillaspey, Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time fork lift operator from September 4, 2004 through May 5, 2006, when he was discharged. He had previously worked for the same employer under a different company name and his duties included driving with a commercial driver's license. The other company dissolved and when the claimant was hired with the new company as a forklift operator, he was asked whether he would drive on occasion and he said no. The claimant had his chauffeur's license but needed an updated medical certification since it is required every two years and his had expired. The manager told him he would give him a couple weeks to think about it and the claimant started working. When the manager went back to the claimant and asked whether he would update his license, the claimant stated he would not do so because of "personal issues." The claimant did not disclose what the issues were. The employer needed another part-time driver to get the deliveries out, but the claimant refused each time he was asked. The employer could not afford to hire another driver in addition to the claimant, so when the claimant again refused on May 5, 2006 he was let go.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for refusing to drive for the employer when the need arose. At the time of his hire, the claimant told the employer he did not want to get an updated medical certification because he had "issues." The employer knew this and still hired the claimant. Even after a couple weeks had passed and the employer again asked the claimant to update his license, the claimant refused. The claimant's refusal to get his medical certification updated is certainly questionable, but the fact remains that he made his feelings known at the time of hire, and was hired anyway. Even though the employer may have expected the claimant to change his opinion, the claimant was under no obligation to do so. The employer certainly had no other alternative but to discharge the claimant. However, work-connected misconduct, as defined by the unemployment insurance law, has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated June 5, 2006, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sdb/cs