

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK W MURPHY
Claimant

APPEAL NO. 10A-UI-10319-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PETERSON CONTRACTORS INC
Employer

OC: 12/20/09
Claimant: Respondent (5)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 16, 2010, reference 01, that held the claimant was not offered work on June 15, 2010, and that allowed benefits. A telephone hearing was held on September 7, 2010. The claimant, his wife, Christi, and witness, Jessica Van Pelt, participated. Jennifer Lockhart, Payroll Coordinator, and Doug DeSchamp, Supervisor, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on August 20, 2002, and last worked for the employer as a full-time equipment operator on June 9, 2010. The employer agreed to the claimant missing work on June 14 to attend a probation meeting. The evening of June 14, the claimant experienced a car problem and he called Supervisor DeSchamp to say he would be missing work the next day. DeSchamp told him it was his lucky day, as there would be no work that day due to a significant rainfall. DeSchamp also told the claimant he would call him when he could come back to work.

DeSchamp failed to call the claimant about returning to work, and the employer considered the claimant a no-call, no-show for three days (June 16 – 18) and terminated his employment. Since the claimant had been laid off before and called to come back to work, he did not think it was necessary to call the employer.

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on June 15, 2010.

The claimant did not voluntarily quit as a no-call, no-show to work, but he was terminated for no act of misconduct. The claimant reasonably relied on his supervisor's statement that he would be called back to work. It was not misconduct for the claimant to fail to call in, as he had been laid off and called back to work by the employer in the past.

DECISION:

The department decision dated July 16, 2010, reference 01, is modified. The claimant was not discharged for misconduct on June 15, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw