

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TED MILLER
Claimant

APPEAL NO: 12A-UI-12273-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

OC: 01/01/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Ted Miller (claimant) appealed an unemployment insurance decision dated October 4, 2012, reference 02, which held that he was not eligible for unemployment insurance benefits because he was discharged from Whirlpool Corporation (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 8, 2012. The claimant participated in the hearing. The employer participated through Robert DeVaux, Human Resources Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

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 maintenance mechanic from March 1980 through July 5, 2011 when he was discharged for theft of company property, which was a violation of the Collective Bargaining Act, Article 20, Paragraph 136, Section A. He stole scrap metal from the employer and was criminally charged on July 6, 2011. It was scheduled for trial in November 2011 but the claimant pled guilty to theft in the third degree. Assistant County Attorney Nathan Repp notified the employer of this fact by letter on October 31, 2011. Mr. Repp sent an additional letter dated November 1, 2011 which advised the employer that as a condition of the sentencing order, the claimant was responsible for paying victim restitution so any claims for financial losses had to be filed within 30 days.

When the claimant was asked in the hearing about the reasons for his separation, he testified, "I was never fired, I didn't quit, I just left from there." The employer witness joined the hearing after it had started and the claimant subsequently admitted that he pled guilty for theft of the employer's property, but only because his attorney told him to do so. However, he continued to

deny that he was terminated by the employer. The claimant eventually admitted he missed three days because he was incarcerated.

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 § 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.

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on July 5, 2011 for stealing scrap metal from the employer. He subsequently pled guilty to theft of company property and his current claim that he was not fired from this employment is disingenuous at best. The claimant's theft shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

The issue of gross misconduct was not listed on the hearing notice and is therefore not decided. Gross misconduct is "deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act." Iowa Code §96.5(2)(c). A disqualification for gross misconduct provides an enhanced disqualification in that the claimant's wage credits earned from all employers, prior to the date of discharge, are cancelled. Iowa Code §96.5(2)(b). This means that even if the claimant earns ten times his weekly benefit amount following his discharge from the employer, he may never collect benefits chargeable to this employer.

The employer has five years to protest a claimant based on gross misconduct. Iowa Code § 96.5-2-b. The claimant is already disqualified for misconduct, but if the employer wishes to raise the gross misconduct issue, it must file a protest with the Agency on that basis and supply the necessary information to show grounds for a gross misconduct disqualification.

DECISION:

The unemployment insurance decision dated October 4, 2012, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs