

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZACHARY B KITZMANN
Claimant

APPEAL NO: 14A-UI-01312-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROP PRODUCTION SERVICES INC
Employer

OC: 08/04/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 28, 2014, reference 01, that held he was discharged for misconduct on January 3, 2014, and benefits are denied. A telephone hearing was held on February 26, 2014. The claimant participated. The employer chose not to participate. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on March 19, 2008, and last worked for the employer as a full-time chemical applicator and delivery driver on January 3, 2014. Claimant was arrested for OWI in September 2013. After contesting the driver license issue, it was revoked November 25.

Claimant let the employer know his license was revoked and it continued to have claimant do work that did not involve driving. On January 3, 2014, the employer discharged claimant because he did not have a license to drive.

The employer representative submitted a statement the employer was choosing not to participate in this hearing.

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.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes employer failed to establish claimant was discharged for a current act of misconduct on January 3, 2014.

The employer knew claimant's license was revoked on November 25 and it allowed continuing employment by having claimant do jobs that did not require a license. Since there was no new misconduct issue, the January 3 discharge is not based on a current act of misconduct.

DECISION:

The department decision dated January 28, 2014, reference 01, is reversed. The claimant was not discharged for a current act of misconduct on January 3, 2014. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs