

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WAYNE RASMUSSEN
Claimant

AIRGAS USA LLC
Employer

APPEAL NO. 14A-UI-05408-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/04/14
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Wayne Rasmussen (claimant) appealed an unemployment insurance decision dated May 27, 2014, (reference 01), which held that he was not eligible for unemployment insurance benefits because he was discharged from Airgas USA, LLC (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 16, 2014. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked full time from January 3, 2007, through May 8, 2014, when he was discharged. He started as a shuttle driver, went to a lead filler position but mostly worked as the plant manager. The regional manager asked the claimant if he would support the district manager if he took action against the branch manager. The claimant said he would so the regional manager asked him to relay that to the district manager. The claimant did as requested but the district manager misunderstood him and believed the claimant was trying to take control of the branch and the plant.

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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. Benefits are allowed.

DECISION:

The unemployment insurance decision dated May 27, 2014, (reference 01), is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css