

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID M SMITH
Claimant

APPEAL NO. 14A-UI-02511-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLIEDBARTON SECURITY SERVICES LLC
Employer

OC: 02/02/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated February 28, 2014, reference 02, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on March 27, 2014, by telephone conference call. The claimant participated personally. Employer participated by Marc Rath, Account Manager, and Tim Nicholson, Operations Manager. The record consists of the testimony of Marc Rath; the testimony of Tim Nicholson; the testimony of David Smith; and Employer's Exhibits 1-7

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides security services for John Deere plants in Waterloo, Iowa. The claimant was hired on May 17, 2013, as a security officer on the third shift. His last day of work was January 31, 2014. He was terminated on January 31, 2014.

The incident that led to the claimant's termination occurred on January 22, 2014. The claimant had attended a quarterly training meeting, which included training on inspection of semi-trucks coming into the plant to check for explosives. The claimant then made a comment that anybody could put a stick of C4 on a trailer and drive it in and blow the plant up. (Exhibit 1) The claimant was terminated, in part, for making this comment. He was also terminated for deleting emails from a shared email folder and not being able to handle "situations". (Exhibit 1) The claimant had previous warnings about his job performance. The claimant does not have computer skills and struggled with that part of the job. He also struggled with emergency situations but he did not always know what to do despite training. The claimant tried his best to do the job but was incapable of performing the job to his employer's satisfaction.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition specifically excludes unsatisfactory job performance due to incapacity or inability. In addition, errors of judgment or discretion made in good faith do not constitute misconduct. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The administrative law judge has carefully weighed the testimony and evidence in this case and concludes that the reason that the claimant was terminated was that he did not perform the job to the employer's satisfaction. The claimant did not have computer skills when he was hired and he continued to struggle with the computer even after the employer provided him with extra training. The claimant did not respond well to emergency situations and admitted that he either did not know or did not understand what he was supposed to do. The comment that he made about blowing up the plant was perhaps unfortunate but he did not threaten to do so and merely commented about the ease with which that could be done, which is likely a natural response to the training he just received. The employer may have had good business reasons for terminating the claimant but those good business reasons are not misconduct in this case. Since there is insufficient evidence of disqualifying misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated February 28, 2014, reference 02, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css