

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DANIEL L BUCKALLEW**  
Claimant

**APPEAL 16A-UI-12670-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SMITH FERTILIZER AND GRAIN CO**  
Employer

**OC: 10/23/16  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 15, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 23, 2016. Claimant did not respond to the hearing notice instruction and did not participate. Employer participated through human resource manager Kim Gross, company president Max Smith and shop foreman Paul VanDriesten. Employer's Exhibit 1 was received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time detailer through October 27, 2016. Claimant reported to work after hours on October 14, 2016, and stole an unloaded weapon and \$50 cash from Smith's truck. On October 15, claimant's friend called Smith and offered to return the property. Claimant did not return to work thereafter. Had he reported, he would have been discharged.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

**Causes for disqualification.**

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant engaged in theft of the employer's personal property. This is disqualifying misconduct, even without prior warning.

**DECISION:**

The November 15, 2016, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Since no benefits were claimed or paid, no overpayment is established.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs