

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TANNER PHILLIPS**

Claimant

**APPEAL NO: 13A-UI-04877-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HAWKEYE PRIDE EGG FARM LLP**

Employer

**OC: 03/24/13**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Tanner Phillips (claimant) appealed an unemployment insurance decision dated April 16, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Hawkeye Pride Egg Farm, LLP (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 30, 2013. The claimant participated in the hearing with Attorney Shaun Thompson. The employer participated through Human Resources Director David Lein, Complex Manager Randy Epting and Manager Mike Novotny. 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 July 11, 2011 through March 19, 2013 when he was discharged for theft. The employer has many missing items including a welder, sand blaster, steam cleaner, transfer pump, drills, blaster, fly fogger and other tools. The missing items amount to approximately \$10,000.00. The employer began an investigation when 175 feet of welding lead went missing. Manager Mike Novotny spent hours reviewing surveillance recordings and found two recordings of the claimant moving the welding lead. One recording showed him moving the welding lead to the back door and another recording showed him taking the lead out of the building itself. That amount of welding lead is very heavy and bulky as it consists of wrapped copper wire. After the investigation started, the claimant was later recorded returning approximately 25 feet of the welding lead. After the employer saw the surveillance recordings, the matter was turned over to the Humboldt Sheriff Department who conducted an interview with the claimant at the employer's facility. The claimant was discharged shortly thereafter. A search warrant was

issued for his residence and the employer has subsequently been advised the claimant was charged with theft of the employer's property.

### **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 for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on March 19, 2013 for theft of company property. Although he denies theft, his explanation as to why he removed that large amount of welding lead from the employer's building is not credible, particularly since it was another employee's. The preponderance of the evidence confirms the claimant was discharged for work-related misconduct. Benefits are denied accordingly.

**DECISION:**

The unemployment insurance decision dated April 16, 2013, reference 01, 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.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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