

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT A OLDEROG

Claimant

APPEAL NO. 13A-UI-07627-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

STATEWIDE TIRE DISTRIBUTORS INC

Employer

OC: 05/26/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated June 17, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice an in-person hearing was held on September 16, 2013, in Davenport, Iowa. The claimant appeared personally. The employer participated by David Ripley. The record consists of the testimony of David Ripley; the testimony of Scott Olderog; the testimony of Mark Olderog; and Employer's Exhibits 1-8. This case was heard in conjunction with 13A-UI-07626-VS.

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 is engaged in wholesale tire distribution. The claimant previously worked for his father, Roger Olderog. Olderog Tires got into financial difficulties and Roger Olderog and Roger Cornelius, the owner of Statewide Tire Distributors, entered into some negotiations regarding the sale of some of the assets of Olderog Tires. Neither Roger Olderog nor Roger Cornelius participated in the hearing and none of the witnesses knew exactly what agreement or agreements were made and when. The claimant did start working for Statewide on February 18, 2013. He was terminated on May 31, 2013.

The date of the incident that led to the claimant's termination is unknown. The claimant does not know why he was terminated but speculated that it had something to do with the negotiations for purchase of the business, to which he was not privy. The claimant received no warnings prior to his termination except for a reminder to use the time clock.

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 disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The employer failed to provide sufficient evidence to show that the claimant was discharged for disqualifying misconduct. Roger Cornelius, the individual who made the decision to terminate the claimant, did not testify at the hearing. All David Ripley could say was that it had something to do with the failure to provide some computer access codes. The claimant testified that he had only been asked about the codes approximately a week to ten days earlier. The letter sent by Mr. Cornelius (Exhibit 6) is vague as to what exactly happened and when. In order to disqualify a claimant for misconduct, the employer is obligated to provide evidence that the claimant was discharged for a current act of misconduct. The employer has failed to provide that evidence. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated June 17, 2013, reference 01, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs