

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN D OTT
Claimant

APPEAL NO. 09A-UI-18102-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-LINE IRON & METALS INC
Employer

**Original Claim: 10/25/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Steven Ott filed a timely appeal from a representative's decision dated December 2, 2009, reference 01, that denied benefits based upon his separation from A-Line Iron & Metals, Inc. After due notice was issued, a telephone hearing was scheduled for and held on January 7, 2010. The claimant participated personally. The employer participated by Kyle Stone, owner/president.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Steven Ott was employed by A-Line Iron & Metals, Inc. as a full-time laborer/driver from September 10, 2008, until September 21, 2009, when he was discharged from employment. Mr. Ott was paid by the hour. His immediate supervisor was John Weekly.

On September 20, 2009, a company employee reported to company management he had observed the property of A-Line Iron & Metals at a location that Mr. Ott was renting. As the employee was Mr. Ott's landlord and because the employee was familiar with A-Line Iron & Metal's property, the company owner considered the allegation to credible and contacted the police.

Mr. Stone, accompanied by police officers, went to the claimant's residence, where Mr. Stone observed commercial utility scrap that was of the type and description that the company had been hauling from a commercial utility facility to its yards recently. Because the claimant's job as a truck driver required him to pick up the scrap at the client location and to deliver it back to A-Line's yard, the employer reasonably concluded that Mr. Ott was stopping by his residence to unload A-Line iron scrap at the claimant's resident instead of taking the scrap to the yard as required.

Mr. Stone declined to press criminal charges against Mr. Ott but required that the materials be returned to the company and discharged the claimant. A scrap container was placed at Mr. Ott's residence by A-Line Iron & Metals and Mr. Ott loaded the container with the scrap metal that Mr. Stone had identified, returning it to A-Line Iron & Metal's custody.

It is the claimant's position that the commercial-grade utility scrap identified by Mr. Stone was not the property of A-Line Iron & Metals but had been secured by other sources by Mr. Ott.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the preponderance of the evidence supports the employer's contention that the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

In this case, the testimony is disputed. The administrative law judge, having considered the matter, concludes that the weight of evidence is established in favor of the employer.

Here, the evidence establishes that Mr. Ott worked at the company facility and that his job was to pick up scrap metal of the exact nature described by Mr. Stone at a commercial utility location and returned to A-Line Iron & Metal's facility. As a driver, the claimant had the opportunity to offload some of A-Line's property at his residence en route back to the A-Line facility. In

addition, Mr. Stone testified under oath that he personally identified the items as of the nature and type that was being scrapped from a commercial utility client and that the items were the property of A-Line Iron & Metals. Mr. Stone also testified that he gave the claimant the option of returning the items in lieu of Mr. Stone pressing criminal charges against the claimant. The evidence establishes that a metal drop box belonging to A-Line was then placed at Mr. Ott's residence and that Mr. Ott filled the box with the disputed items for return to his former employer. The administrative law judge also notes that Mr. Ott was not consistent in his testimony as to where he obtained the scrap metal in question. At one juncture the claimant testified that he had personally gathered the items and at another juncture he testified that another individual had supplied the items to him.

After carefully weighing the evidence in this matter, the administrative law judge concludes that the employer has established by a preponderance of the evidence that the claimant's conduct showed a willful disregard for the employer's interests and standards of behavior and thus was disqualifying under the provisions of the Iowa Employment Security Law. Benefits are withheld.

DECISION:

The representative's decision dated December 2, 2009, reference 01, is affirmed. Steven Ott is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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