

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY BLOCK

Claimant

APPEAL NO: 07A-UI-00467-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'REILLY AUTOMOTIVE INC

Employer

**OC: 12/10/06 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Larry Block (claimant) appealed an unemployment insurance decision dated January 5, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from O'Reilly Automotive, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 30, 2007. The claimant participated in the hearing. The employer participated through Jon Workman, Store Manager. Employer's Exhibits One and Two were admitted into evidence. 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 employer discharged the claimant for work-related misconduct.

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 and then part-time delivery specialist from March 31, 2003 through November 24, 2006 when he was discharged for violating the employer's driver policy. This policy warns that company vehicles are to be used strictly for company business and not personal use. The claimant was warned about this same policy violation on August 5, 2005 when he drove the employer's vehicle to the post office. The employer discovered this policy violation only because the claimant's vehicle would not start and the employer had to help him get it back to the employer's store. This warning specifically advised him that further violations would result in termination. He again violated the employer's driver's policy on January 16, 2006 when he was cited by a Linn County police officer for not wearing a seat belt. A first and final written warning was issued to him by human resources on January 20, 2006. The final incident occurred on November 24, 2006 when the employer again discovered the claimant had used the employer's vehicle for personal errands. He had been assigned to deliver parts but the customer who ordered the parts called the employer and asked where the parts were. The employer said the claimant should have been there and when the claimant returned, the employer asked him where he had been. The claimant initially stated that

he took a different route and when asked why, he eventually admitted to stopping at his home to tell his grandkids goodbye. The claimant was discharged at that time because he had been previously warned about violating the driver's policy.

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 section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for repeated violations of company policy. He had received two previous warnings on August 5, 2005 and January 20, 2006 for violating the driver's policy. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on

such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8). The claimant was discharged as a result of a current act but his past policy violations were considered. His repeated violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated January 5, 2007, 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs