

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN W COX
Claimant

APPEAL NO. 16A-UI-06091-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CNH AMERICA LLC
Employer

OC: 05/08/16
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

John Cox (claimant) appealed a representative's May 27, 2016, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with CNH America (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 17, 2016. The claimant participated personally and Mike Edwards, Bargaining Chairman of United Autoworkers Local 807. The employer participated by Valerie Hammond, Human Resources Representative; Brandon Knouse Security Officer; and Joyce Stimpson, Human Resources Representative. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on August 12, 2013, and at the end of his employment was working as a full-time transport truck driver. The claimant signed for receipt of the employer's policies on August 12, 2013. The claimant worked through January 13, 2016, when he took a disability leave.

The employer posted signs indicating guns and knives were not allowed on the premises. Both the employer's Weapons Policy and Workplace Violence Policy prohibited individuals from carrying a weapon on company property. The Weapons Policy indicated the behavior could result in termination from employment. The employer had an unwritten no-tolerance policy for weapons in the workplace. The claimant knew the employer's policies regarding weapons on company property.

On May 6, 2016, the claimant drove into the employer's parking lot on his motorcycle. He parked his bike and approached the guard shack. Beside the guard shack there is a sign banning weapons from the property. The claimant was wearing a belt with a sidearm holster.

The guard saw a weapon in the holster and told the claimant to leave the property. In response, the claimant covered the holster with his motorcycle helmet and returned to his bike. The claimant left the property.

On May 6, 2016, the claimant called the human resources representative. He said he planned to stop by and talk to her but he had his firearm on him and thought he should just call her. The two talked about the claimant's knee and medical leave. The employer terminated the claimant on May 10, 2016, for violating the employer's policies by having a firearm on company property on May 6, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code § 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.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant clearly disregarded

the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally put the sidearm in its holster. He intentionally got on his bike and intentionally drove on the employer's property. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's May 27, 2016, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs