

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROCKY L BURRILL
Claimant

DK & B LLC
Employer

APPEAL NO: 11A-UI-00979-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/02/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated January 13, 2011, reference 04, that held the claimant was not discharged for misconduct on December 14, 2010, and benefits are allowed. A telephone hearing was held on February 24, 2011. The claimant participated. Brian Gay, President, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on September 20, 2010, and last worked as a full-time driver-loader on December 14. The claimant was operating a backhoe on December 14 when his coat caught on the reverse lever causing it to damage a backboard. The claimant had only a few hours of experience on the backhoe prior to the accident.

The claimant had scuffed some tires causing some cosmetic or appearance damage, but they were not replaced. The claimant forgot to replace a fuel cap that allowed some debris to enter it. The claimant did not receive any formal warning about his job performance, but he was given some time off due to personal issues.

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on December 14, 2010.

While claimant performed his job in an unsatisfactory manner, he was not discharged for job disqualifying misconduct. The accident was not due to misconduct but most probably based on a lack of experience in operating the backhoe. A single incident of negligence is not misconduct.

Scuffing tires and failing to replace a fuel cap were not so significant as to cause the employer to issue a written warning and put the claimant on notice his job was in jeopardy. The employer had the claimant take some time off due to personal issues.

DECISION:

The department decision dated January 13, 2011, reference 04, is affirmed. The claimant was not discharged for misconduct on December 14, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css