

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY P MURPHY
Claimant

APPEAL NO. 07A-UI-06849-S2T

EMPLOYMENT CONNECTIONS INC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/17/07 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employment Connections (employer) appealed a representative's July 11, 2007 decision (reference 01) that concluded Timothy Murphy (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 30, 2007. The claimant participated personally. The employer participated by Jim Kitterman, Owner, and Robert Seggerman, Staffing Coordinator. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for 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 hired on October 31, 2006, as a full-time temporary production worker assigned to Eaton Corporation. During the claimant's employment he received no warnings. Eaton Corporation has a large parking lot with numerous pedestrian crosswalks painted yellow on the pavement. One such crosswalk extends through the fence and into the building. Numerous Eaton employees drive on the crosswalk each day.

On June 19, 2007, the claimant and his wife requested to leave at 11:20 a.m. instead of the end of shift at 3:40 p.m. The claimant drove his car onto a crosswalk to collect his wife. The two were the only people in the parking lot at that time. Eaton Corporation terminated the claimant's assignment because he violated a safety policy. The employer terminated the claimant for that same violation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 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). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of misconduct at the hearing. The claimant and employer agreed that the conduct was an error in judgment. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's July 11, 2007 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs