

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD H NESMITH
Claimant

APPEAL NO: 12A-UI-02534-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROWNMILLER LEASING & TRANS INC
Employer

OC: 01/22/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 34.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 5, 2012, reference 01, that held he was discharged for misconduct on January 28, 2012, and which denied benefits. A telephone hearing was held on March 29, 2012. The claimant participated. Todd Brownmiller, 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 as a full-time over-the-road driver on April 15, 2010, and last worked for the employer on January 27, 2012. Claimant was notified by the safety director he was discharged for unsatisfactory work and later told the company president it was also due to customer complaints.

The employer gave claimant a verbal warning about an Ohio customer complaint on March 31, 2011. Claimant swore at and argued with the customer about a delivery to the point they no longer wanted to do business with the employer. The employer questioned claimant about roof damage to a trailer that he denied he was responsible.

The company president received some customer complaints about claimant deliveries in Oklahoma and Washington that occurred about three weeks prior to discharge. The customers were unhappy with claimant's conduct and made him wait to unload his delivery (put in the penalty box). The employer was concerned claimant was causing them to lose customers and made the decision to discharge.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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.

The administrative law judge concludes the employer has failed to establish claimant was discharged for a current act of misconduct in connection with employment on January 27, 2012.

The employer's failure to issue the claimant a written warning his job was in jeopardy makes it difficult to pinpoint the current act as to the date and the date when the employer discharged the claimant. While the employer offered credible testimony claimant exhibited inappropriate behavior that prompted multiple customer complaints, the best evidence is this occurred about three weeks prior to discharge, which does not make it a current act. In order to disqualify claimant, the employer must establish a current act of misconduct in relationship to the date of discharge.

DECISION:

The department decision dated March 5, 2012, reference 01, is reversed. The claimant was not discharged for a current act of misconduct on January 27, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw