

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FARLEY L GRANGER
Claimant

APPEAL NO. 10A-UI-02764-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CB & I CONSTRUCTORS INC
Employer

OC: 01/17/10
Claimant: Respondent (1)

Section 96.5-2-A – Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 10, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for March 30, 2010. Neither the claimant nor the employer responded to the hearing notice. Official notice is taken of the agency file.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having reviewed the agency file, makes the following findings of fact:

The claimant was hired by the employer on March 27, 2008, and was terminated by the employer for alleged misconduct on January 13, 2010. The alleged misconduct was violation of a reasonable and known policy. The claimant acknowledged in writing a copy of the employer's handbook and substance abuse policy.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The parties did not respond to the hearing notice and therefore no testimony could be taken. A review of the agency file shows that the parties did not participate in fact-finding interviews. The only evidence in the file are letters from the employer's representative. The claimant was allegedly discharged for misconduct. Letters from an employer representative are not sufficient evidence to show misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated February 10, 2010 , reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css