

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL E MAYNARD
Claimant

APPEAL NO. 14A-UI-05813-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BWS LEASING INC
Employer

OC: 05/04/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michael Maynard (claimant) appealed a representative's May 29, 2014 (reference 02) decision that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with BWS Leasing (employer) for failure to follow instructions in the performance of his job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 27, 2014. The claimant participated personally. The claimant's wife, Christine Maynard, also participated in the hearing. The employer participated by Matthew Hickman, Plant Manager; Gabriel Hendrickson, Floor Manager; Paula Jurgensen, Office Manager/Assistant Plant Manager. 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 October 25, 2010 as a full-time wash bay horseshoe person. The claimant signed for receipt of the employer's handbook. On June 13 and August 13, 2013 the employer issued the claimant written warnings for absenteeism. On October 28, 2013 and February 3, 2014 the employer issued the claimant written warnings for failure to follow instructions. On April 2, 2014 the employer issued the claimant a written warning for failure to follow instructions. The employer notified the claimant further infractions could result in termination from employment. On May 1, 2014 the employer issued the claimant a written warning for attendance issues. The employer notified the claimant further infractions could result in termination from employment.

On May 2, 2014 the claimant was supposed to take a 15-minute break. He took an extended break. On May 5, 2014 the employer terminated the claimant for failure to follow instructions.

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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's May 29, 2014 (reference 02) decision 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

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