

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVE L SIERCK
Claimant

APPEAL NO. 16A-UI-10691-TN

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENERAL TRAFFIC CONTROLS INC
Employer

OC: 09/04/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated September 21, 2016, reference 01, which denied unemployment insurance benefits, finding that the claimant was discharged from work on August 25, 2016, for failure to follow instructions in the performance of his job. After due notice was provided, a hearing was held in Spencer, Iowa on January 11, 2017. Claimant participated. The employer participated by Mr. Allen Glover, President, and Ms. Amanda Brown, Project Manager. Employer's Exhibits A, B and C were admitted into the hearing record.

ISSUE:

The issue is whether the claimant was discharge for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Dave Sierck was employed by General Traffic Controls, Inc. from July 2015 until August 25, 2016, when he was discharged. Mr. Sierck was employed as a full-time traffic signal technician. Claimant normally worked 8 a.m. until 5 p.m. Monday through Friday and was paid at the rate of \$17.00 per hour. His immediate supervisors were Allen Glover and Amanda Brown.

On August 25, 2016, the claimant requested permission to take his lunch hour early that day because he wanted to use the time in the morning to fly his kite due to favorable weather conditions. Mr. Glover, the company president, approved the claimant's request to take his lunch early. When a service request came in that morning, the claimant was informed of the service call and was aware that company management expected him to take the service call and provide the traffic control light service that was needed. Because the call had come in at approximately 9:30 a.m., Mr. Glover believed that the claimant would provide the service requested to the client that morning, as there was sufficient time to do so even if Mr. Sierck took his lunch hour early as requested.

Later that morning, when the company president realized that the service call had not yet been responded to, he made an effort to locate the claimant. Mr. Sierck could not be found on the company property and the claimant did not respond to text messages and repeated calls to the company cell phone that had been provided to Mr. Sierck. When the service call had not been responded to by 12:30 p.m. that day, Mr. Glover took the call himself and as he was leaving observed the claimant returning to the facility from flying his kite.

Mr. Sierck returned to the employer's facility at approximately 12:30 p.m. and was told by Ms. Brown that the company president had left for the service call because Mr. Sierck could not be found. Mr. Sierck was upset because the company president had taken the call in his place. The claimant once again left the employer's facility and went home to eat lunch. After completing the service call, the company president located Mr. Sierck at the claimant's house and discharged Mr. Sierck.

A decision was made to terminate the claimant because of his conduct of that day. Earlier that morning, Mr. Sierck had been reminded about the employer's expectation that he would follow work directives. The claimant's failure to follow work instructions and the claimant's failure to keep the employer apprised of his location and work status had been the subject of numerous warnings to the claimant and also referenced in Mr. Sierck's yearly evaluation.

Approximately one month before the claimant's discharge, he had been placed on a paid-by-the-hour basis and was aware that if he had to work any overtime during the work week, he was to report it and would be paid at the overtime rate. Mr. Sierck was also aware that if overtime was required to finish work that had been assigned to him, the overtime would be authorized.

It is Mr. Sierck's position that he had worked two extra hours on the preceding evening and his intention was to use those two hours as compensatory time on the morning of August 25, 2016, in addition to the one hour early lunch that had been approved by management that morning.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits; it does.

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 claimant is not qualified to receive unemployment insurance benefits if an employer discharges the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). For unemployment insurance purposes, misconduct is amounts to a deliberate act and a material breach of the duties and obligations arising out of a workers contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or the employee's obligations and duties to the employer.

In the case at hand, the evidence in the record establishes that although Mr. Sierck had excellent technical skills, he had been repeatedly warned about his failure to follow the work instructions, to report his work activities and hours, and to keep the employer apprised of the work locations and work status. Mr. Sierck was also aware that in his position as an hourly employee, he would be paid for overtime work and that the overtime would be authorized if it was necessary in the performance of his duties. The claimant was expected to report his work hours on a regular basis and the determination of whether the claimant had worked overtime hours would be made at the end of each week when the working hours were reported, not by the hours of one single day's work.

Mr. Sierck was discharged on August 25, 2016, when he could not be located for a period of time that far exceeded the one hour early lunch that he had been authorized to take that morning. The claimant was aware that there was an outstanding service call that had been assigned to him, but did not respond to repeated text messages and calls to the cell phone that had been provided to him by the company. The claimant had not requested nor had he been authorized to take additional hours away from work that morning and after he had returned from being absent from the premises for approximately three hours, the claimant left the premises again to go home to eat lunch although he had already used up his lunch hour that day flying his kite.

The administrative law judge concludes, based upon the evidence in the record, that Mr. Sierck's conduct showed a willful disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect from its employees under the provisions of the Iowa Unemployment Security Law. Accordingly the claimant is disqualified for

unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated September 21, 2016, reference 01, is affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs