

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAIMIE D WURR
Claimant

APPEAL NO. 10A-UI-12201-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEDHAM TIRE & AUTO REPAIR INC
Employer

**OC: 07/11/10
Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 18, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 14, 2010. Claimant participated. Employer participated by Michael Peter, owner. The record consists of the testimony of Michael Peter and the testimony of Jaimie Wurr.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides automotive repair services. Michael Peter is the owner of the business. The claimant is Mr. Peter's brother-in-law. The claimant was hired in December 2005 as a full-time auto mechanic. The claimant was terminated on July 12, 2010.

The events that led up to the claimant's termination began on July 8, 2010. A friend of the claimant's brought his truck in for repair. No appointment had been scheduled for the truck. The claimant looked at the truck and determined that the problem was the alternator. A new alternator was purchased and installed, but this did not correct the problem with the customer's truck. The customer was very unhappy with the result. Mr. Peter, who had been out on a service call, then spoke to the customer. He said that we "were only as good as the mechanic." This comment was later repeated by the customer to the claimant.

The claimant was very upset by this comment, feeling that he had been "put under the bus." He was scheduled to work on July 12, 2010. He left a voice mail for Mr. Peter. In that voice mail he said that he was not coming in and that Mr. Peter should not even try calling him. The claimant had been instructed to speak personally to Mr. Peter if he was not coming to work and that leaving a message was not acceptable. Mr. Peter called the claimant back. The claimant

did not answer his phone. Mr. Peter left a message saying that if the claimant did not come to work he would assume that the claimant had quit. The claimant did not call Mr. Peter nor did he come into work. When the claimant came to work on July 13, 2010, his tools were outside. Mr. Peter told the claimant that he was "done."

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 leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Good faith errors of judgment or discretion are not misconduct. Unsatisfactory job performance is also not misconduct. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer has the burden of proof to show misconduct.

The evidence in this case established that the working relationship between the claimant and Mr. Peter had deteriorated for a variety of reasons. The claimant was frequently absent due to health problems and as a result, getting all the work done at the shop began to become a problem. Mr. Peter and the claimant were the only two mechanics and when the claimant was absent, only Mr. Peter was available to do the work. Mr. Peter also felt that the claimant did not take instruction and direction from him and that the claimant's job performance was

unsatisfactory. Things came to a head when the claimant misdiagnosed the problem with a truck and installed an alternator that did not correct the malfunction. Mr. Peter made a comment about the claimant's mechanical ability that the claimant took badly and he refused to come to work on Monday. This refusal coupled with the continuing practice of leaving a message instead of speaking with Mr. Peter led to the claimant's termination.

The claimant's refusal to come to work on Monday because he was "upset" and his failure to call Mr. Peter personally along with his later refusal to even call Mr. Peter was ill-conceived on his part and clearly a poor exercise of judgment on how to deal with the problem between himself and Mr. Peter. The issue is whether the claimant's actions on July 12, 2010, rise to the level of misconduct. After carefully considering all of the evidence in this case, including weighing the testimony of the parties, the administrative law judge concludes that this was misconduct on the part of the claimant. He had been scheduled to work that day and he left Mr. Peter a message that he would not be in and that Mr. Peter should not even try calling him. The claimant was not absent because he was sick or for any excusable reason. He did not answer his phone and while he denied receiving any message from Mr. Peter about coming in to work, Mr. Peter's testimony that he left this message is accepted. The claimant deliberately and intentionally refused to come to work and to notify his employer in person as he was required to do. He did not answer a call from his employer and did not return a call when a message was left for him. This is misconduct. Benefits are denied.

DECISION:

The decision of the representative dated August 18, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs