

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN MORRIS
Claimant

APPEAL NO. 08A-UI-06690-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**METZELER AUTOMOTIVE PROFILE
SYSTEMS IOWA INC**
Employer

OC: 06/22/08 R: 04
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

John Morris (claimant) appealed an unemployment insurance decision dated July 18, 2008, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Metzeler Automotive Profile Systems Iowa, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 6, 2008. The claimant participated in the hearing with Attorney Robert Johnson and co-counsel Attorney Greg Humphrey. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted and, therefore, did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

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 employed as a full-time network pc technician from August 8, 1977 through June 23, 2008 when he was discharged. He was not told why he was discharged but guesses it was because he took eight batteries home that were no longer being used. The employer has an uninterruptable power supply (UPS) that runs the server and the mainframe. If the facility loses power, the UPS kicks in and protects the electronic equipment until it can be properly shut down. The UPS system that was being utilized contained 20 large 12-volt batteries. The employer obtained a new UPS system so the old one was shut down and was going to be scrapped. The claimant asked the facility manager on June 13, 2008 whether he could take eight of those batteries since the system was being scrapped and the facility manager said he had no problem with it but directed the claimant to check with the safety manager. The facility manager is the individual to ask when an employee wants an item that is going to be scrapped or thrown away at work. The claimant's last workday was June 13, 2008

and he took vacation the following week. He was unable to contact the safety manager on June 13, 2008 and took the batteries home since he assumed they would be gone by the time he returned to work on June 23, 2008. He received an e-mail on June 17, 2008 from his boss, the IT manager, who asked him whether he had the batteries. He responded that he did and asked whether he needed to return them but never received a response. The claimant went to the work on June 19, 2008 to ask his boss whether he needed to bring back the batteries and he was told yes. He brought the batteries back on that date and thought that was the end of it. He returned to work on June 23, 2008 and was discharged at that time.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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.

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 Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of

unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. The employer failed to meet its burden. Work-connected misconduct has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated July 18, 2008, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css