

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAVID ALLEY
Claimant

APPEAL NO. 14A-UI-11311-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MARV SMITH ELECTRIC PLUMBING
& HEATING**
Employer

**OC: 05/25/14
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Marv Smith Electric Plumbing & Heating (employer) appealed an unemployment insurance decision dated October 22, 2014, (reference 01), which held that David Alley (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 19, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Jackie Lensing, Secretary.

ISSUE:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a part-time electrical laborer from September 1, 2014, through September 7, 2014, when he was let go because the employer believed his actions could result in an accident.

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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged without warning and after working only a few days because the employer feared his actions would result in an accident. There is no evidence of disqualifying misconduct. Benefits are therefore allowed.

The employer is not a base period employer and its account is not subject to any charges during the claimant's current benefit year. If the claimant establishes a subsequent benefit year, the wage credits he earned from September 1, 2014, through September 7, 2014, would be subject to charge since the employer discharged him for non-disqualifying reasons.

DECISION:

The unemployment insurance decision dated October 22, 2014, (reference 01), is affirmed. 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/pjs