

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JIMMY L VANDERECKEN
201 NE 2ND ST
PO BOX 231
MELCHER IA 50163

ASTORIA INDUSTRIES OF IOWA INC
900 S 4TH ST
PO BOX 715
CHARITON IA 50049

Appeal Number: 04A-UI-03597-DWT
OC 02/29/04 R 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Jimmy L. Vanderecken (claimant) appealed a representative's March 29, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Astoria Industries of Iowa, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 21, 2004. The claimant participated in the hearing with his witness, Sally Renee Hildreth. Tiffany Wolf, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 7, 2000. He worked full time as a general laborer. Dave Hansen was the claimant's supervisor.

During his employment, the claimant did not receive any written warnings for attendance problems or for failing to keep his work area properly cleaned. At times his performance evaluation indicated that his attendance needed improvement.

The employer gave employees ten minutes at the end of a shift to clean their paint guns, put away paint and sweep the floor. Every Friday afternoon, the employer gave employees 30 minutes to do a major cleanup of their booth, which included changing air filters. Prior to late January 2004, the claimant asked the employer to do something about the way air filters were kept in place because the "doors" or mechanism that held the filter in place did not fit properly. This resulted in sagging air filters.

In late January 2004, Department of Natural Resource (DNR) officials inspected the employer's facility for air quality. The DNR official noted the sagging air filter in the claimant's booth. After the inspection had been completed, the employer told the claimant that if the employer received a written violation for any problems noted in his booth, the claimant would be discharged. After the inspection, the employer changed its policy about when to change air filters. Instead of changing air filters on Friday, the employer told employees to change filters on Tuesday and Thursday. The claimant followed both procedures.

On February 13, 2004, the employer received the air quality report. The DNR official gave the employer a written warning for problems found in the claimant's booth. The employer did not say anything to the claimant about the violation until February 27, 2004.

On February 11, 2004, the claimant called the employer to report he was unable to work as scheduled that day because he was at the hospital with his son. On February 23, 2004, the claimant called Hansen to report he had car problems and would be late for work. The claimant was 90 minutes late for work on February 23, 2004. On February 27, 2004, the employer's records indicate the claimant was late for work. The claimant does not remember why he was late. The employer's attendance policy informs employees if they have three attendance occurrences in a month, the employer may start the employer's disciplinary process.

On February 27, the claimant went in for his annual performance evaluation. The employer then told the claimant he was discharged because the employer had been written up by DNR for problems found in the claimant's booth. The employer also considered the claimant's attendance because he had three attendance occurrences in February.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §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 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's 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 of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Prior to late January 2004, the claimant had no realization his job was in jeopardy. While the employer encouraged the claimant to work as scheduled, the employer did not indicate the claimant's job was in jeopardy for any attendance problems.

Throughout his employment, the claimant followed the employer's cleaning schedule. After an air quality inspection in late January 2004, the employer told the claimant he would be discharged if the employer received any violations as a result of the inspection. On February 13, 2004, the employer received its first air quality violation based on problems found in the claimant's painting booth. The employer did not say anything to the claimant until February 27 about receiving the violation. Any problems the employer had with the cleanliness of the claimant's booth occurred in late January. The evidence does not establish the claimant failed to clean his booth properly in February. As a result, the cleanliness of the claimant's painting booth does not constitute a current act.

The claimant received three attendance occurrences in February. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). The only absence that was not explained and the claimant failed to properly notify the employer about occurred on February 27 when he was less than 30 minutes late for work. Based on the claimant's attendance, the evidence does not establish that the claimant intentionally failed to work as scheduled. While the claimant's attendance issue is a current act, the claimant did not intentionally fail to work as scheduled.

The employer established business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally and substantially disregarded the employer's interests. The claimant did not commit work-connected misconduct. Therefore, as of February 29, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 29, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 29, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf