

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS E JARVILL
Claimant

APPEAL NO. 16A-UI-02875-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VALERO SERVICES INC
Employer

**OC: 02/14/16
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Valero Services (employer) appealed a representative's March 2, 2016 (reference 01) decision that concluded Thomas Jarvill (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 28, 2016. The claimant participated personally and through David Fullerton, Shift Supervisor. The employer participated by Robert Abbott, Director of Human Resources.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on November 3, 2008, as a full-time process operator. The claimant signed for receipt of the employer's employee guide on March 24, 2009. He went through Laboratory Cook Operator Training on June 18, 2010. As a process operator he was supposed to collect 18 samples of different things at various times; on which another worker would perform tests. The employer understood if the claimant did not extract the samples at precisely the correct time but samples had to be drawn at different times.

The claimant had heard about a co-worker who did not follow procedures and was terminated. His production manager talked to the claimant when he found the claimant not taking three separate samples and following the employer's rules. On October 26, 2015, the employer issued the claimant a written warning for having a loud, profane conflict with a co-worker. The employer notified the claimant that further infractions could result in termination from employment.

On February 7, 2016, the standard of procedure was for the claimant to collect a sample of flour at 8:00 p.m., 12:00 a.m., and 4:30 a.m. The claimant collected a sample at 11:00 p.m. and used it for the first two collections. He drew another sample at 4:00 a.m. for the 4:30 a.m. collection. On February 11, 2016, the claimant sent an e-mail to the employer admitting that he

did not follow standard operating procedures. The employer terminated the claimant on February 16, 2016; for failure to follow the employer's rules and take three separate samples after having been warned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's March 2, 2016 (reference 01) decision is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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