

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CURTIS V NULL

Claimant

APPEAL NO. 10A-UI-15766-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIVYER STEEL CORPORATION

Employer

OC: 09/19/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated November 15, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 28, 2010. The claimant participated. The claimant was represented by Charles McGill, president United Steel Workers Local 105. The employer participated by Kelly Hickles, human resources assistant.

This case was heard in conjunction with 10A-UI-15767-VST. Both cases involve the same set of facts and the same witnesses. The employer and the claimants consented to both claims being heard at the same time. The record consists of the testimony of Kelly Hickles; the testimony of Curtis Null; the testimony of Virgil Null; and Employer's Exhibits 1-2.

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 is a steel foundry located in Bettendorf, Iowa. The claimant (who will be referred to as "Curtis") was hired on June 4, 2007. He was a millwright at the time of his termination. Curtis's last day of work was September 17, 2010. He was terminated on September 20, 2010.

The incident that led to the Curtis's termination occurred on September 19, 2010, which is a Sunday. Curtis asked his father, who was also an employee of the employer, to drive him to the employer's place of business. Curtis's lawnmower had broken down and he needed two nuts and two bolts to fix his lawnmower. Curtis does not have a driver's license. The hardware store was closed on Sunday. Curtis decided to borrow the nuts and bolts from the employer's storeroom. Virgil drove Curtis to the employer's place of business.

While he was waiting for his son, Virgil saw Dennis Glaser, the factory manager. Mr. Glaser was there to do some work prior to a meeting on Monday. Mr. Glaser waved to the Virgil, who was sitting in his car. Mr. Glaser then went into the plant and saw Curtis in the bolt room. He asked Curtis what he was doing. Curtis explained that he needed a couple of bolts for his lawnmower and that the hardware store was closed. Mr. Glaser told Curtis that he was trespassing. Curtis asked Mr. Glaser three times if he should leave the nuts and bolts and Mr. Glaser replied that "what was done was done." Curtis took the nuts and bolts and Virgil drove him home. He fixed his lawnmower.

On Monday, September 20, 2010, Virgil and Curtis returned to work and Curtis brought back the nuts and bolts. Virgil and Curtis were summoned to a meeting with human resources and union representatives. Both Virgil and Curtis were terminated for violation of Shop Rule 17. This rule prohibited theft of company property. The value of the nuts and bolts was approximately \$0.30.

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. The legal definition of misconduct excludes errors of judgment or discretion in isolated situations. The employer has the burden of proof to show misconduct.

Although the employer did not provide direct testimony at the hearing, the facts are not in dispute. Virgil drove his son to the employer's premises on a Sunday so that Curtis could get some nuts and bolts from the storeroom to fix a lawnmower. Virgil did not take the nuts and bolts himself. He did know what his son intended to do. Curtis did take two nuts and two bolts from the employer without permission and returned the items on Monday. Both Curtis and Virgil testified that they did not believe they were doing anything wrong. Virgil stated that it was common practice to borrow the employer's tools and that he had used a cutting torch. He admitted that he had asked for permission first.

The administrative law judge has carefully considered the evidence in this case and has concluded that Curtis's actions on September 19, 2010, do not constitute misconduct. The administrative law judge acknowledges that one of the most fundamental duties owed by an employee to an employer is honesty. An employer can reasonably expect that an employee will not misappropriate the employer's property. Curtis testified that he did not believe that he was stealing. He asked Mr. Glaser three times if he should leave the nuts and bolts and was told that "what was done was done." Curtis testified that if he would have been told he could not take the nuts and bolts, he would have left immediately.

Curtis exercised extremely poor judgment by borrowing the nuts and bolts from his employer. He should have gone to a store that was open or waited to mow his grass. Given the totality of the circumstances in this case, however, there is insufficient evidence of a deliberate intent on his part to steal from the employer. There was no evidence that he had engaged in this type of conduct in the past. Mr. Glaser did not testify at the hearing. The claimant's testimony that Mr. Glaser did not ask him to leave the nuts and bolts stands unrebutted in this record. The claimant could have reasonably assumed that he was free to take the items. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated November 15, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw