

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONALD J HLUBEK**  
Claimant

**A-LERT**  
Employer

**APPEAL NO: 10A-UI-11737-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/20/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated August 11, 2010, reference 01, that held he was discharged for misconduct on June 24, 2010, and benefits are denied. A telephone hearing was held on October 6, 2010. The claimant, and his attorney, Jennie Clausen, participated. Julie Sumner, Employee Services Assistance, Terry Geary, General Foreman, and Chris Nigh, Foreman, participated for the employer. Employer Exhibits 1 – 4 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on July 28, 2005, and last worked as a full-time mill-wright/iron worker on June 24, 2010. The employer implemented a new eyewear protection policy in November 2009 that was reviewed with claimant and other employees during a safety meeting on March 24, 2010. The policy requires employees to wear “spoggles” while grinding or for employees who wear prescription glasses, they must use goggles over the glasses.

The claimant was working on a job site at ADM when its personnel observed that he was not wearing spoggles, and it brought this matter to the attention of Foreman Nigh. The claimant had been performing a non-spoggle required job, and had just moved over to a grinding job to assist another worker. Nigh questioned claimant why he wasn't wearing protective eyewear, and he admitted he forgot. The claimant moved to another non-spoggle eyewear protection required job.

After lunch, General Foreman Geary approached claimant while he was working a non-spoggle required job, and asked whether he would wear spoggles. Three times the claimant answered no, and he was then called to the office where he was discharged. The claimant did bring

goggles with him to the office, and when noticed by Geary, he said it is too late for that. Geary discharged the claimant for failing to wear the proper eyewear protection.

Prior to discharge, the claimant was never issued a writing warning for failing to use proper eyewear protection. Prior to discharge on June 24, the claimant's foreman never observed the claimant failing to use the proper eyewear while performing grinding. The claimant has worn goggles over prescription eyeglasses (bi-focal eye lenses) while performing work since the March 24 meeting.

## **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.

The administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on June 24, 2010.

The employer discharged the claimant for an isolated incident without any prior discipline or warning regarding a new eyewear protection policy. There is no evidence the claimant had previously violated the policy. When claimant's foreman challenged him about not wearing the required eyewear protection, he moved to a job that did not require it. Sometime later, when the general foreman challenged claimant about why he was not wearing the required eyewear protection (meaning earlier that day), claimant was working a current job that did not require it, and he responded that he would not wear the "spoggles" (because it was not required for the

present job). This is most probably why the claimant went to get some goggles to wear over his prescription glasses when he proceeded to the office where he was discharged.

The evidence does not establish that claimant intentionally violated the eyewear protection policy in any respect, as to the earlier incident when he forgot, or the later incident when it was not required. When the claimant answered with a refusal to wear spoggles, it was in reference to the present job not the earlier job, and when he could wear goggles over his prescription safety glasses that is acceptable according to employer policy.

**DECISION:**

The department decision dated August 11, 2010, reference 01, is reversed. The claimant was not discharged for misconduct on June 24, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs