

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACOB W DREIFURST
Claimant

APPEAL NO. 15A-UI-13376-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIREPLACES PLUS INC
Employer

OC: 11/08/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Fireplaces Plus (employer) appealed a representative's December 2, 2015, decision (reference 01) that concluded Jacob Dreifurst (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 December 28, 2015. The claimant participated personally. The employer participated by Keith Beyhl, Owner.

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 worked for the employer as a full-time fireplace installer. The employer did not have a handbook and did not issue the claimant any warnings. The employer sent a team of two employees out to install a fireplace. Generally the claimant helped install gas units and performed the outside installation for the lead employee with experience.

On November 3, 2015, the owner told the claimant he was sending him as the lead employee to install a wood burning fireplace on November 4, 2015. The claimant told the owner he did not feel comfortable going inside on the job without the lead employee with all the experience. The owner did not change the assignment. On November 4, 2015, the claimant realized the wood burning fireplace did not come with a manual. He called the owner when he realized the owner ordered the incorrect size unit. The owner had anger issues. He yelled at the claimant to "cut it to fucking fit" and hung up on the claimant. The claimant normally worked with gas installation and could cut sheet metal to make things fit. Not knowing any better, the claimant cut the non-combustible floor. It was no longer fireproof. On November 5, 2015, the homeowner suspected a problem and called the owner. The mistake was discovered and the claimant and his teammate were terminated on November 7, 2015.

The claimant filed for unemployment insurance benefits with an effective date of November 8, 2015. The employer participated personally at the fact-finding interview on November 17, 2015, by Keith Beyhl.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

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). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of his lack of training and following the employer's instructions.

Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 2, 2015, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css