

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEORGE BURCHAM
Claimant

APPEAL NO: 10A-UI-04668-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLARD REFRIGERATED SERVICES INC
Employer

**OC: 02/07/10
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer appealed a department decision dated March 10, 2010, reference 01, that held the claimant was not discharged for misconduct on January 21, 2010, and benefits are allowed. A telephone hearing was held on May 10, 2010. The claimant participated. ,Ryan Axman, GM, participated for the employer. Claimant Exhibit A 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 as a full-time facility engineer on September 4, 2008, and last worked for the employer on January 20, 2010. While reviewing an employer safety manual in the fall of 2009, the claimant and employer representatives discovered that facility engineers should be able to wear a respirator. The employer had the claimant attend a HASMAT class, and he saw an employer designated physician at company expense on November 13. The physician did not approve the claimant to wear a respirator, and he immediately provided the report to the employer.

The claimant met with the employer about the issue and he requested the employer at its expense find another doctor for him to see in an attempt to be approved for respirator use. On January 20, 2010 the employer told the claimant it was his responsibility to clear his medical history and it rejected his request. When the claimant persisted in his request, he was terminated as a voluntary quit.

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 that the claimant was discharged for misconduct in connection with employment on January 20, 2010.

The claimant's failure to attempt to clear his medical history is a job (requirement) refusal. The issue is whether it is for good cause. Wearing a respirator was not a job requirement at the time of hire or for more than one year of employment. The employer needed the claimant to be able to put on a respirator, if required. The claimant made a reasonable request to the employer to help him find a different doctor and pay for the examination in order to seek approval. The claimant had a good cause for refusing the employer denial and his discharge is not misconduct.

DECISION:

The department decision dated March 10, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on January 20, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css