

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WAYNE R KUHNS
Claimant

APPEAL NO. 09A-UI-18008-M

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDVIK INDUSTRIES INC
Employer

OC: 11/01/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 20, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 30, 2010. Claimant participated personally. Employer participated by Derek Nordvik, Production Manager. Exhibits A and One were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 2, 2009.

Claimant was discharged on November 2, 2009 by employer because claimant failed to complete a pre trip safety inspection. Claimant marked that he had inspected the truck. The oil was below the add mark when employer checked the truck after claimant's alleged inspection. Employer and claimant then added oil to the truck. Claimant had two warnings for safety violations. Claimant was warned on both occasions that his job was in jeopardy should another safety issue occur. Employer provided contemporaneously created documentation that backs up the prior final warnings given to claimant. Failing to keep the oil at proper levels creates a safety hazard. If the truck is too low on oil it could cause the motor to seize up resulting in loss of control and an accident. Such motor incidents cause potential life threatening accidents.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning safety. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant violated a known company policy that could have resulted in danger to himself or others. The two prior warnings weigh heavily toward a finding that claimant violated a known company rule with knowledge that discharge could result. The documentation created by employer close in time to the incidents weigh heavily toward a finding that claimant was on notice that his job was in jeopardy. The prior documentation also weighs heavily toward a finding that claimant intentionally violated policy. Employer's corroborating documentation allows employer to meet their burden of proof. This is a violation of a safety duty owed employer. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated November 20, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs