

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEITH MACDONALD
Claimant

APPEAL NO: 09A-UI-19580-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BE & K CONSTRUCTION COMPANY
Employer

OC: 11/08/09
Claimant: Appellant (2)

Section 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 22, 2009, reference 02, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on February 9, 2010. The claimant participated in the hearing. Cheryl Clark participated in the hearing for the employer with a witness, Sheila Gieltz.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

The claimant worked full-time as a pipe fitter from September 29, 2008, to November 10, 2009. He was informed and understood that under the employer's work rules, he could be discharged for safety violations and the safety rules required him to wear double eye protection and use both hands when grinding. On July 10, 2009, the claimant received a warning and suspension for not properly locking out and tagging out a machine.

On November 10, 2009, the safety director observed the claimant grinding some pipes while he was on a ladder. She believed that he was not wearing proper eye protection and was grinding with only one hand. The claimant was discharged on November 10 for violating the safe grinding rules.

The safety director's belief that that he was not wearing proper eye protection and was grinding with only one hand was wrong. The claimant was wearing double eye protection using spoggles with bifocal lens the safety director had approved and was not using one hand to grind.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that he was wearing proper eye protection and was grinding using both hands.

DECISION:

The unemployment insurance decision dated December 22, 2009, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs