

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS THILL
Claimant

APPEAL NO: 08A-UI-06523-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

GEORGIA PACIFIC CORRUGATED LLC
Employer

OC: 04-13-08 R: 04
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 11, 2008, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 30, 2008. The claimant participated in the hearing with Union Representative Mark Cook. Mary Jo Kenneally, Human Resources Manager; Sterling Brody, Plant Manager; and Pat Neece, Superintendent, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time rotary assistant for Georgia Pacific Corrugated from October 22, 1969 to June 19, 2008. On June 14, 2008, the claimant was observed working on a machine without first having completed the lock out tag out (LOTO) procedures (Employer's Exhibit Three). It was his second violation for the same offense within the last three months. On April 8, 2008, the claimant had another violation of the LOTO procedures and was suspended for 15 days. When he returned April 29, 2008, he was placed on a Last Chance Agreement (Employer's Exhibit 2) stating any further actions of a similar nature could result in termination. The claimant signed the warning and was given a follow-up training course on that machine before he returned to work. Following the June 14, 2008, incident the employer terminated the claimant's employment (Employer's Exhibit One). The claimant testified that he forgot to LOTO the machine the second time on June 14, 2008, and attributes his forgetfulness to a sleeping medication and an anti-depressant that he discontinued. He never told the employer he had a medical problem or was taking medication that might affect his job. The employer places safety first above productivity and they would have been willing to work with the claimant had he made them aware of his medical conditions as they did when he was placed on restricted hours in April 2008. The employer conducts yearly safety training and quarterly reviews of each of the machines.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

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 claimant violated the employer's LOTO procedures just two and one-half months after he was placed on a Last Chance Agreement and retrained in the procedure on that machine. While the claimant was a long-term employee and it is unfortunate his career had to end in this manner, he violated the safety measures that had been in place for years twice in two and one-half months and was becoming a safety liability to the employer. The employer placed him on a Last Chance Agreement to try to help him save his job but the claimant continued to forget the LOTO procedures. Although the claimant testified he is on medication that makes him forgetful, he was able to perform his job in the proper manner the majority of the time and did not ever go to the employer and tell it he was having difficulty because of his medications. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The July 11, 2008, reference 03, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs