

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LYDELL F MATTHEWS
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 15A-UI-00173-KCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/22/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 30, 2014, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 29, 2015, at 1:00 p.m. The claimant participated. The employer participated through Carrie Jaster, human resources generalist. Exhibit 1 was admitted into evidence.

ISSUE:

Was the claimant discharged for a disqualifying, employment-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a set-up operator. He began working at Whirlpool in July 2013 and was separated from employment on December 9, 2014. The claimant was trained on a required “lock out / tag out” safety procedure when he began employment. The procedure requires the operator to power the machine down and put a lock through the switch to prevent possible injury.

The claimant was working on his machine on December 8, 2014. There were fewer employees working that day. His direct supervisor Ryan Robertson and team leader Nate Robinson directed him to go to another machine to help a maintenance worker who was attempting to fix a grinding machine. The claimant asked his supervisor why he should be working on that machine instead of the maintenance worker. Robinson told him because the claimant knew how to operate that particular machine. The claimant went to help the worker on the grinding portion of the machine that had stalled. The conveyor belt was still moving.

The claimant started working on the machine and removing parts that the maintenance worker had placed in the machine. When the claimant came away from the machine, the maintenance worker told him that he had failed to complete the safety procedure. No one was injured as a

result of the claimant's conduct. The claimant acknowledged that he did not perform the safety procedure. He testified that he forgot to follow the lock out / tag out procedure because of the pressure of the moment. He also testified that his supervisor and team leader were present.

Supervisor Robertson told the claimant that he would be written up and it would likely lead to suspension. Robertson told the claimant that he would need to meet with human resources representative Teresa Feldman on December 10. The claimant, his union representative, and supervisor Robertson attended the brief meeting. No other safety issues or incidents of misconduct by the claimant were cited. Ms. Feldman advised the claimant he would be terminated for failing to complete the required safety procedure on December 8, 2014. She dismissed statements from the union representative that other employees had recently failed to complete the same procedure and received lesser disciplinary actions.

The meeting attendees signed a document entitled "Coaching/Discipline Form" dated December 10, 2014 which outlined the basis for termination. (Employer's Exhibit 1) The employee was seen working in a piece of equipment without it being properly locked out, in violation of the company's lock out / tag out policy. The form lists possible actions including: coaching, first written warning, second written warning, third written warning, suspension and termination. The basis identified for the action, related to contract provision Article 20, Section 1, (m), referred to any tampering with safety devices or equipment, or violation of known or published safety rules.

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 § 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 claimant's statement that he simply forgot to follow the safety procedure due to circumstances in the facility on that day is inconsistent with his willingness to take the time to question his supervisor's directive to help with the equipment. There is also no evidence that the claimant's supervisor advised him to skip the safety procedure while helping with repair of the equipment.

The employer is charged under both federal and state law with providing its employees a safe working environment; furthermore, it is in employer's best financial interest to avoid employee injuries. Given the nature of the potential injury to employees if the safety procedure is not followed, the claimant's knowledge of the need to follow the safety procedure, and the length of time he was employed with the employer, his failure to follow safety procedure constitutes disqualifying misconduct. Benefits are denied.

DECISION:

The December 30, 2014 (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.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/pjs