

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYRONE AMOS
Claimant

APPEAL NO. 08A-UI-08105-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ADVANCED COMPONENT
TECHNOLOGIES INC**
Employer

OC: 08/10/08 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Advanced Component Technologies (employer) appealed a representative's September 2, 2008 decision (reference 01) that concluded Tyrone Amos (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 24, 2008. The claimant participated personally. The employer participated by Denise Bright, Human Resources Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the 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 that: The claimant was hired on March 5, 2008, as a full-time operator. The claimant was not told at the time he was hired that he might have to operate a saw. He would not have accepted the job if he had known he would be required to operate a saw because he was fearful of saws.

On August 12, 2008, the employer told the claimant to go to a different department and operate a band saw. The claimant had never refused to work in any department before. He told the employer he was fearful and would not cut parts with a saw. The employer took the claimant to meet with the Human Resources Manager. The claimant told the Human Resources Manager that he was fearful of saws. The employer did not think the claimant was listening to him sufficiently and terminated the claimant for talking and interrupting. The claimant understood the employer to have an open door policy and did not suspect he would be terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The claimant was talkative, fearful and interrupted. This behavior was not serious enough to constitute misconduct without prior warning. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's September 2, 2008 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css