

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN C MICKEY
Claimant

APPEAL NO. 10A-UI-00763-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INTERNATIONAL INC
Employer

**Original Claim: 12/06/09
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's January 5, 2010 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for non-disqualifying reasons. A telephone hearing was held on February 25, 2010. The claimant participated in the hearing. Melinda O'Connell, the on-site supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The employer registered to work with the employer.. The employer assigned the claimant to a job at Winegaard on February 2, 2009. This was an indefinite job assignment.

During the time the claimant worked at Winegaard, the claimant found a relaxed work environment. On December 10, 2009, the claimant picked up a large coil with a fork lift and did not use the coil arm restrictor. The claimant acknowledged that his failure to use the coil arm restrictor amounted to a safety violation. When the coil fell while the claimant was moving it, he was upset. After the coil fell, the claimant took off his gloves to put his reading glasses on so he could complete some paperwork. A Winegaard employee noticed the claimant did not have on his gloves and reminded him that he needed to wear gloves before he handled the coil. The claimant had not yet manipulated the coil when the employee saw him. The claimant put on his gloves because he did not want the coil to cut his hands.

O'Connell went on the floor to talk to the claimant after she learned about his failure to use the coil arm restrictor and that he had his gloves off, two safety violations. When O'Connell approached the claimant he was trying to set up a machine and had his reading glasses on, but not safety glasses. During his Winegaard assignment, there were times he had safety glasses that fit over his reading glasses, but these safety glasses usually could not be found the next day. When the claimant had to read fine print or set up equipment, he put on his reading glasses. No one previously talked to him about his failure to wear safety glasses when he did these tasks and only had on his reading glasses.

O'Connell warned the claimant that if he again failed to wear his safety glasses, he would be discharged. The claimant responded by telling her that was fine because he was looking for another job. After the claimant made this comment, O'Connell left and talked to Winegaard management. When O'Connell returned, she told the claimant he was discharged for his attitude. The employer also discharged him because he had three safety violations in one day.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The evidence reveals that even though the claimant violated a safety rule on December 10, failure to use the coil arm restrictor, he was not going to be discharged for this violation. While a Winegaard employee noticed the claimant did not have his gloves on, the credible evidence does not establish the claimant was manipulating or handling the coil without gloves. The claimant's comment that he was looking for another job resulted in his termination. O'Connell acknowledged she warned him that if he was seen not wearing his safety glasses again, he would be discharged. A preponderance of the evidence indicates that if the claimant had not made any comment about looking for another job, he would not have been discharged on December 10. The claimant used poor judgment when he responded to O'Connell's warning about looking for another job. The claimant's comment does not constitute work-connected misconduct. Therefore, as of December 6, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's January 5, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons that do not constitute work-connected misconduct. As of December 6, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw