

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONNIE W NOLL
Claimant

APPEAL NO. 10A-UI-13119-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIONEER HI-BRED INTERNATIONAL INC
Employer

OC: 08/22/10
Claimant: Appellant (2)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated September 17, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 3, 2010. The claimant participated. The claimant was represented by Steve Ort, attorney at law. The employer participated by Ben Moore, plant manager. The record consists of the testimony of Ben Moore; the testimony of Ronnie Noll; and Employer's Exhibit 1.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer produces and packages hybrid seed corn at a manufacturing facility located in Mt. Pleasant, Iowa. The claimant began full-time employment on October 25, 1984. He was terminated on August 20, 2010. The claimant came to work on August 23, 2010, after a week's vacation. He was notified at that time that he had been terminated.

The incident that led to the claimant's termination occurred on August 2, 2010. The claimant and another employee were hauling de-tassling equipment from the fields back to the plant. The de-tassler is secured by chains on a ramp, which is hauled by a truck. The claimant and the other employee neglected to pull up the ramps and as a result, were seen driving down a highway with the ramps down, causing sparks.

The employer viewed the claimant's failure to pull up the ramps as a serious safety violation. The claimant had been given written warnings for safety violations in 2005 and 2007. The claimant did work after the August 2, 2010, incident and was not informed that his job was in jeopardy as a result of the August 2, 2010, incident. The delay between the incident and the

actual termination was due to consultations with other individuals, including legal and human resources.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The definition of misconduct excludes errors of judgment or discretion or acts of simple negligence in isolated situations. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

In this case, the evidence does not establish a current act of misconduct. Although Mr. Moore testified that the claimant's failure to pull up the rams was a serious safety violation, he never informed the claimant that his job was in jeopardy as a result of this incident. The incident took place on August 2, 2010, but the claimant did not find out that he had been terminated on August 20, 2010, until he came back to work on August 23, 2010, following one week of vacation. The claimant was permitted to work following the incident. Although a reasonable

time for investigation is allowed, a period of 18 days indicates that the claimant was not discharged for a current act of misconduct.

Even if the incident on August 2, 2010, can be considered a current act of misconduct, the claimant's failure to bring up the ramps is negligence in an isolated instance, not a material breach of the worker's duty to the employer. There is no evidence that the claimant acted deliberately. He made a mistake. A single instance of carelessness is not sufficient evidence of misconduct. Although the employer may have had good business reasons to terminate the claimant, the claimant's act on August 2, 2010, does not constitute misconduct as that term is defined in unemployment insurance law. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's decision dated September 17, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw