

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on March 21, 2005. The claimant worked as a fulltime assembler on the second shift. Bohn was the claimant's supervisor. The employer has a policy that pop cans that come from vending machines in the employer's facility must be placed in boxes provided by the employer. The policy is in effect so the cost of pop to employees can be kept to a minimum. At orientation, the claimant did not learn about the pop can policy.

During the course of his employment, the claimant saw employees take bags of empty pop cans from the employer's facility to their vehicles. The claimant knew of no employee who had been disciplined for removing empty pop cans from the employer's facility.

On July 28, 2005, Bohn received information that the claimant was taking pop cans from the employer's facility to his vehicle. Bohn asked Vanderwilt, the production manager, if there was anything wrong with the claimant removing pop cans. Bohn learned the employer's policy prohibited employees from removing pop cans from work. The employer concluded employees who removed pop cans from work, committed theft.

When Bohn saw the claimant leave the employer's facility with a bag of pop cans (about ten), he told the claimant that the employer did not allow employees to remove pop cans from work and the claimant was violating the employer's policy. The claimant indicated that this was a stupid rule and left work with the pop cans.

Fitzsimmons talked to the claimant later that day. When the employer told the claimant he was suspended for taking pop cans out of the employer's facility, the claimant asserted he had not known about the rule and that other employees also took pop cans from the employer's facility. After the employer told the claimant he was suspended, the claimant made a comment that Fitzsimmons could not tell him where or when he worked.

On August 11, 2005, the claimant received a letter informing him he had been discharged. The employer discharged him for removing pop cans from the employer's facility, but primarily for insubordination on July 28 when he failed to follow Bohn's instruction and then acted in a confrontational manner when Fitzsimmons suspended him.

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. 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).

Prior to July 28, the claimant may not have known he was violating a rule when he took pop cans from the employer's facility. On July 28, his supervisor saw him violating the employer's pop can rule and told the claimant to leave the pop cans at work. The claimant did not return the pop cans because he believed the employer implemented a "stupid rule." While taking ten empty pop cans is insignificant, the fact the claimant failed to follow his supervisor's direction amounts to an intentional disregard of the standard of conduct the employer has a right to expect from an employee.

Later on July 28 when the employer suspended the claimant, he naturally became upset for being suspended for taking ten empty pop cans. While he was upset, the claimant made comments that demonstrated he tested the employer's management and authority by telling Fitzsimmons she could not tell him where or when to work. The claimant's conduct when the employer suspended him constitutes an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee.

DECISION:

The representative's August 30, 2005 decision (reference 02) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. As of July 31, 2005, the claimant is not qualified to receive unemployment insurance benefits. This disqualification continues as until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/kjw