

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PEDRO RUIZ
Claimant

APPEAL NO: 15A-UI-12126-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

OC: 10/04/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 22, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 18, 2015 and continued on November 19, 2015. The claimant participated in the hearing with his wife/witness Amy Ruiz. Carolyn Cross, Human Resources Manager; Lee Trask, Team Lead; Bret Henderson, Team Lead; and Kevin Spencer, Team Lead; participated in the hearing on behalf of the employer and were represented by Attorney Espnola Cartmill. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production operator for Van Diest Supply Company from October 8, 2012 to September 24, 2015. He was discharged for insubordination and failing to follow the employer's lock out/tag out procedure.

Employees are assigned to different work areas, plants, and duties, when they arrive for work. On September 24, 2015, the claimant's written assignment indicated he was to go to Plant DF9 and help package. When the claimant arrived at that plant the employees stated they did not need any help and told him to call Team Lead Bret Henderson to see if he was needed elsewhere. The claimant paged Mr. Henderson and told him the packaging employees at DF9 said he was not needed. Mr. Henderson told the claimant to send the co-worker who accompanied him to DF9 to a different plant but said the claimant should remain there and help the DF9 packaging employees.

After approximately 60 to 90 minutes, Mr. Henderson called the claimant and told him he was supposed to be breaking up chunks of product from the extruder and asked why he was not listening to Production Operator Jeff Brown. The claimant stated Mr. Brown was not his

supervisor and Mr. Henderson replied that if the claimant “needed a white hat to tell you what to do then I will tell you what to do. Go back and break up the extruder chunks.” When the claimant got off the phone with Mr. Henderson, co-worker Brandon Sandlin said he would go help Mr. Brown because he was being hostile toward the claimant.

The claimant went to lunch and when he returned at 3:30 a.m. Mr. Sandlin asked him to go upstairs and help Mr. Brown clean the extruder. When the claimant went upstairs he found Mr. Brown and Production Operator Maurice Bouillon cleaning the extruder. The claimant grabbed a scraper and started working on the cages that were set aside. Mr. Brown asked the claimant about the scraper and then “ripped it” out of his hands and pushed the claimant away. The claimant fell backward a couple of steps before Mr. Brown became more aggressive and grabbed the claimant by the shoulder and threw him to the ground. The claimant got up and went downstairs to call Mr. Henderson. He told Mr. Henderson he needed to report an assault and Mr. Henderson stated he would be there shortly.

When Mr. Henderson arrived the claimant explained what happened and Mr. Henderson took his statement. He sent the claimant back to work, telling him to stay out of Mr. Brown’s workspace and told Mr. Brown to stay away from the claimant too. Later in the shift DF9 Plant Manager Jason Raymond instructed the claimant to go meet with Team Lead Kevin Spencer. The claimant was attempting to explain the assault situation to Mr. Spencer and as he explained what happened Mr. Spencer stated, “So you were working on the extruder without it being locked out?” The claimant said, “No. My hands were on the outside.” While the claimant continued trying to tell Mr. Spencer about the assault Mr. Spencer kept bringing the claimant back to the extruder and the claimant believed he was trying to get him to say he violated the lock out/tag out policy. Finally, the claimant stated if Mr. Spencer did not believe him that was fine but he still wanted to talk about the assault. Mr. Spencer then said there was another report of the claimant being insubordinate to Mr. Henderson.

The employer’s policy states that anytime an employee works on the extruder it must be locked out. Neither Mr. Brown, who was also subsequently terminated for assaulting the claimant and failing to lock out the extruder, nor the claimant, locked out the machine and neither believed they had to do so in that situation. The area both employees were in is not marked as a danger zone but each employee is trained on lock out/tag out procedures at the time of hire.

After reviewing the situation, the employer terminated the claimant’s employment September 24, 2015, for insubordination and a lock out/tag out violation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. *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 substantial and 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).

The claimant credibly testified he was assigned to help package in DF9 and was doing so until Mr. Henderson directed him to go upstairs and assist employees in breaking up extruder chunks. At that time Mr. Sandlin, another packaging employee, said he would go help with the extruder chunks because of the obvious tension between the claimant and Mr. Brown. The claimant did not do the task he was assigned by Mr. Henderson at that time but it was not unusual for employees to switch duties among themselves between the two jobs. While the claimant's actions could technically be considered insubordinate, the evidence does not establish that he intended to ignore the directions from Mr. Henderson. Instead, in an attempt to diffuse the situation between the claimant and Mr. Brown, the claimant and Mr. Sandlin came up with a solution that eliminated the need for the claimant and Mr. Brown to work side by side breaking up extruder chunks.

The second reason cited for the claimant's termination was his failure to lock out the extruder. There were at least two other employees working on the extruder when the claimant went upstairs. They hit the kill switch but had not locked out the machine. The claimant was scraping cages and did not believe he was within the physical area where he was required to lock out the machine. The employer rightly values safety within the workplace. Its level of training on when the extruder needs to be locked out, however, does not match the importance it places on safety. The area is not marked as a danger area on the floor and while the employer stated it provides training on lock out/tag out at the time of hire and annually, the

claimant disputed that he was trained annually on the procedure. Not only did the claimant not understand he was required to lock out the extruder when scraping the cages, Mr. Brown and the other employee did not realize it either. If the policy is important enough that it can result in an employee's termination, it is imperative that employees be sufficiently trained on that procedure and that there not be this much confusion about when the machine must be locked out.

Under these circumstances, the administrative law judge cannot conclude the claimant's actions, with regard to insubordination or the lock out/tag out procedure, rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The October 22, 2015, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs