

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUCAS A HENRY
Claimant

APPEAL NO. 11A-UI-02713-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PLUMROSE USA INC
Employer

OC: 12/19/10
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Plumrose USA Inc. filed a timely appeal from a representative's decision dated February 22, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was held on March 29, 2011. The claimant participated personally. The employer participated by Kristina Kelly, Hearing Representative and witnesses, Ms. Jaycie Chenoweth, Mr. Bill Brown and Mr. Jamie Brooks. Employer's Exhibits One through Seven were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Lucas Henry was employed by Plumrose USA Inc. from December 3, 2004 until December 23, 2010 when he was discharged from employment. Mr. Henry held the position of full-time maintenance mechanic and was paid by the hour. His immediate supervisor was Bill Brown.

The claimant was discharged based upon an incident that took place on December 10, 2010. On that date Mr. Henry noticed that another worker from a previous shift had turned Mr. Henry's toolbox backwards and the claimant informed Mr. Brooks of the incident in hopes that Mr. Brooks could help stop the horseplay that was taking place from the previous work shift.

A few moments later Mr. Henry yelled at Mr. Brooks to attract his attention. When Mr. Brooks approached, the claimant slapped Mr. Brooks across the face with grease that had been placed on the claimant's toolbox apparently by a previous shift worker. Mr. Henry was yelling and upset at the time. The claimant struck Mr. Brooks with sufficient force to cause reddening on the side of Mr. Brook's face that remained a number of minutes after the incident.

After Mr. Henry's temper had subsided he apologized to Mr. Brooks for his conduct and was instructed to go back to work. The company began investigating the matter after Mr. Brooks reported the incident. Statements from various employees who witnessed the incident were gathered. A decision on the termination of the claimant was delayed for approximately two weeks as the manager was required to go out of town. After reviewing the matter and considering the fact that Mr. Brooks had previously received a warning and suspension for losing his temper, a decision was made to discharge Mr. Brooks from his employment. The claimant was discharged effective December 23, 2010.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

In this matter the evidence in the record establishes that Mr. Henry was discharged following an incident in which the claimant became angry and slapped a management worker across the face smearing grease on his face because the claimant was angered at the horseplay of other company employees. Mr. Henry initially brought the matter to the attention of Jamie Brooks at the beginning of the claimant's work shift, however, the claimant became further angered when he discovered that other employees had placed grease on the handles of his toolbox. At that

junction Mr. Henry called Mr. Brooks over to the work area in an angry manner and slapped Mr. Brooks across the face with sufficient force to cause reddening and smearing grease across Mr. Brooks' face. The claimant was aware of the company's zero tolerance for violence in the workplace and had previously been warned and suspended for losing his temper at work. The claimant was thus aware that further incidents of that nature could result in his termination from employment. The claimant's discharge was delayed approximately two weeks as the company was investigating the matter and a management individual necessary for making the decision regarding Mr. Henry's continued employment was out of town.

Although the administrative law judge is sympathetic to Mr. Henry's situation, the administrative law judge must nevertheless conclude based upon the evidence in the record that the claimant's conduct in becoming unreasonably angry and striking another worker showed a disregard for the employer's interests and standards of behavior and thus was disqualifying conduct under the provisions of the Employment Security Act. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated February 22, 2011, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and meets

all other eligibility requirements of Iowa law. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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