

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK D VOS

Claimant

APPEAL NO. 09A-UI-09382-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VERMEER MANUFACTURING COMPANY

Employer

Original Claim: 01/18/09

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Mark Vos, filed an appeal from a decision dated June 24, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on July 16, 2009. The claimant participated on his own behalf. The employer, Vermeer, participated by Distribution Development Manager Chad Vanderwilt, Human Resources Business Partner Felicia Van Dusseldorp, and Security Officer Terry Pope. Exhibit One was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Mark Vos was employed by Vermeer from February 28, 1972 until May 21, 2009 as a full-time inventory coordinator. He had received a copy of the employee handbook, which notified him if he wished to purchase or borrow material or equipment from the employer, he must have documentation to present to the security officers before he left the premises. On October 5, 2007, he received a written memo from his supervisor notifying him he should have documentation to present to the security officers even if he was only transporting scrap material. It was recommended he do this for any material he was taking off premises in order to protect himself from accusations of wrongdoing.

The company policy does not require a security check if wood or wood chips are being taken off property. On May 14, 2009, a truck driver reported having seen Mr. Vos loading items into a trailer attached to his vehicle, and apparently hiding them under wooden pallets. A security surveillance camera was focused on the claimant's vehicle and the attached trailer after this report was made. In addition, Security Officer Terry Pope was sent to visually inspect the trailer. He saw wooden pallets and two by fours, but also plastic and steel items that were placed under the wooden items along with cement blocks and chock blocks. The surveillance video showed the claimant reaching down to take something off the ground and put it in the trailer just before he left that day.

Mr. Vos did not stop at the security check point and he did not have any documentation authorizing him to take the non-wood items off premises. He was interviewed on May 15, 2009, and asked if he knew the policies regarding stopping at security with items being taken off premises. He acknowledged he did know the policy and said he had loaded the items onto the trailer the morning of May 14, 2009, but not during any break period. He was suspended pending a full investigation.

The employer reviewed further video and again questioned the claimant on May 19, 2009 and asked if he could explain the part of the video footage that showed him picking something off the ground, which appeared to have been hidden up until then, and putting it in the trailer just before he left for the day. Mr. Vos maintained it was a steel pipe he just saw and picked up off the ground. When asked why he did not check in with security since this was a non-wood item, he did not have an explanation.

The employer reviewed the information from the interviews with the claimant and others, Mr. Vos's personnel file, the video footage and the company policy, and it was determined he had violated the company policy. He was discharged by Mr. Vanderwilt on May 21, 2009.

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.

The claimant was aware of the company policy that required him to have appropriate documentation for any non-wood item being taken off premises, and to stop at the security check point for inspection before leaving. While it is true wood or wood chips do not have to be inspected by security, Mr. Vos had many items in his trailer that were not wood. It is apparent from the witness statements the non-wood items were deliberately secreted under the wooden pallets to avoid detection.

The claimant could not provide any adequate explanation for his failure to have the necessary documentation for the non-wood items, or his failure to stop for inspection. Even if the items were, as he maintained, discarded material intended to be hauled away to the landfill, it does not excuse him from the company policies. It would have been a very simple matter to have a supervisor write up documentation allowing him to take away the scrap. The fact he did not do this raises suspicion that these items were not, in fact, scrap, but usable items he was taking for his own use, in violation of company policy. It is theft of company property which is conduct not in the best interests of the employer. The claimant was discharged for substantial, job-related misconduct and is disqualified from receiving unemployment benefits.

DECISION:

The representative's decision of June 24, 2009, reference 01, is affirmed. Mark Vos is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw