

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOUIE P DOLL
Claimant

APPEAL NO. 13A-UI-06420-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RELCO LOCOMOTIVES INC
Employer

OC: 05/05/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 22, 2013, reference 01, that concluded he had been discharged for work-connected misconduct. A telephone hearing was held on July 8, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Cara Crall participated in the hearing on behalf of the employer with a witness, Tom Shipp.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a fabricator from July 26, 2010, to May 7, 2013. Tom Shipp was the claimant's supervisor. In November 2011, the claimant was reprimanded for making threats and using derogatory language to a coworker.

On May 7, 2013, the oxygen tank on the piece of equipment he was working on ran out. There was no tank of oxygen available other than one attached to an unused piece of equipment. He decided to remove both tanks, strap the empty tank on unused piece of equipment for safety reasons, and install the filled tank on the piece of equipment. He then planned to get the dolly to move the empty tank back to where the empties were stored.

After the claimant strapped the empty tank on the unused piece of equipment, Tom Shipp approached him. Shipp mistakenly believed the claimant was going to just leave the empty tank and not return it. He told the claimant "You are one of the motherfuckers who bitch about the empty tanks being left everywhere." The claimant tried to explain what he was doing, but the conversation became heated with both men yelling and swearing. In the end, the claimant told Shipp that he did not need to listen to this. At that point, Shipp told the claimant "three days off," and pointed at the door.

The claimant spoke to his direct supervisor, Jammie McKim, who told the claimant to go back to work while he talked to Shipp. The claimant returned the empty tank to the tank storage area.

Shipp had decided to just issue a warning to the claimant, but the owner of the company, Mark Bachmann, believed that in light of the past discipline the claimant should be discharged. McKim also reported the claimant had told McKim that he would knock Shipp out if he talked like that to him again. The claimant did not make the threat McKim alleged.

The employer discharged the claimant on May 7, 2013, for insubordination.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6, 11 (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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony was creditable and outweighs the secondhand information the employer provided regarding the alleged threat made to McKim. If the employer wanted to prove the claimant made the threat, McKim should have testified. I believe the claimant's testimony that the argument between the Shipp was mutual and began with Shipp referring to the claimant as a "motherfucker." I also believe Shipp thought the claimant was not going to return the empty tank, which was not true. Both sides made a big deal about one method of returning the tank being better than the other, but the bottom line is if the empty tank was promptly returned, there should have been no issue.

I conclude the argument was provoked by Shipp using one of the crudest insults there is. If Shipp wanted to have a rational conversation with the claimant to impress on him the proper process for returning empty tanks, using profanity-laced insults was not the way to begin. The claimant's was understandable. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated May 22, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css