

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL WERMES
Claimant

APPEAL NO: 15A-UI-11993-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALMER & COMPANY
Employer

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

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 21, 2015, reference 01, decision that denied 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 13, 2015. The claimant participated in the hearing. Hanna Reinders, Human Resources Manager, participated in the hearing on behalf of the employer.

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 lead dumper for Palmer & Company from January 1, 2004 to October 5, 2015. He was discharged for failing to consistently perform the duties of his job.

As a lead dumper in the candy company the claimant was responsible for using the forklift to bring product to the dumpers on the mezzanine level who in turn dump the product into dumpers after which time packaging takes place. The claimant was required to keep the product moving so none of the lines had to wait for him to provide the product to the other dumpers.

On April 28, 2015, the claimant received a first documented verbal conversation because his supervisor and the human resources manager felt he was acting very strange as he could not stay focused and was bouncing between tasks without finishing any of them, he was not providing direction to the other dumpers and was not keeping his area clean. Previously, anytime the employer had an issue with the claimant they felt he was a great communicator and they could see the “light bulb go off in his head” when they talked to him about various issues. The claimant’s supervisor met with him regarding his unusual behavior April 28, 2015, and asked him what was going on. The claimant stated he was having personal problems so the employer granted him immediate vacation instead of requiring him to submit his vacation request at least two days in advance.

On August 24, 2015, the claimant received another documented verbal warning for exhibiting the same behavior as he had shown at the end of April 2015. He had shown brief periods of improvement but did not sustain it for any satisfactory period of time. The employer was concerned about his behavior and work performance August 24, 2015, and met with him formally to discuss the matter.

On August 26, 2015, the claimant received a final written warning for the same type of behavior he demonstrated August 24, 2015. He was acting erratically and not providing the required training to the new dumpers, almost all of whom were temporary and new employees, and failed to enter the necessary information into the computer in a timely manner. When the claimant's supervisor attempted to discuss the matter with him she had a difficult time communicating with him, he would not provide a direct answer to any of her questions, and was talking in circles. The employer was not sure what was wrong with the claimant but believed something was "not right" with him and his performance. He was suspended for three days at that time.

On September 29, 2015, the claimant was not at the lead dumper where he was supposed to be to make sure all the lines have candy for production and to insure the other dumpers are doing their jobs. That morning the claimant was driving the forklift and drove it into the side of the office causing damage to the office wall. The employer suspended the claimant at that time and after noting the claimant's performance had not improved since he began acting differently in April 2015, that it had counseled, warned and suspended him several times, the employer made the decision to terminate the claimant's employment October 5, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant had demonstrated he was able to perform the job of lead dumper to the employer's satisfaction prior to April 2015 at which time his performance became erratic. After the first documented verbal conversation the employer had with the claimant in April 2015 through the date of his termination, the employer talked to the claimant several times about his performance and behavior, issued a documented verbal and a final written warning and suspended the claimant for three days on two separate occasions. The claimant testified he was no longer experiencing personal problems after April 2015 but could not explain his behavior or failure to perform his job to the employer's expectations.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The October 21, 2015, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css