

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKY J HOLVECK
Claimant

APPEAL NO. 12A-UI-06573-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRINTGRAPHICS LLC
Employer

OC: 04/15/12
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Printgraphics, filed an appeal from a decision dated May 30, 2012, reference 01. The decision allowed benefits to the claimant, Ricky Holveck. After due notice was issued, a hearing was held by telephone conference call on June 27, 2012. The claimant participated on his own behalf with Terry Williams and Kenny Bear. The employer participated by Human Resources Manager Sue Nervig, General Manager Barry Paynter, and Production Manager Steve Verville.

ISSUE:

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

FINDINGS OF FACT:

Ricky Holveck was employed by Printgraphics from April 10, 2006 until April 16, 2012 as a full-time tamarack operator working 3:00 p.m. until 11:00 p.m. The employer's policies provide for a zero-tolerance for workplace violence and destruction of company property.

On April 13, 2012, the claimant was operating the tamarack, which is a device that does multiple jobs, including spreading glue on paper. The machine is operated by commands input by a touch screen similar to iPhones and iPads. The claimant attempted to turn off the flow of glue on the machine but it did not stop. He tried several times then, rather than use the emergency shut-off switch, he went to hit the side of the control panel but slipped and hit the screen itself, causing the glass front to shatter.

This was immediately reported to Supervisor Terry Williams and Mr. Holveck explained it as an accident. The claimant was eventually sent home, as he could not continue to work with the control panel damaged. Mr. Williams reported the matter to his supervisor and after many contacts, consultations and meetings, General Manager Barry Paynter, Human Resources Manager Sue Nervig, Production Manager Steven Verville, First Shift Supervisor Casey Spicher and Operations Manager Chris Lyons met in a conference by phone on Monday, April 16, 2012.

Mr. Holveck had been sent home on unpaid suspension pending the employer's decision. By the end of the day on April 16, 2012, the decision had been made to discharge the claimant for destruction of company property and Ms. Nervig notified him by phone.

Ricky Holveck has received unemployment benefits since filing a claim with an effective date of April 15, 2012.

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 discharged under the employer's zero tolerance policy regarding the destruction of company property. The claimant elected not to use the emergency shut-off switch for the machine when he could not get the glue flow to stop by using the control panel. Instead he elected to try to strike the panel, which caused the damage. There is nothing in the record to indicate that striking an electronic control panel of that type would be the least effective and the administrative law judge considers there may have been a certain ill-tempered frustration which prompted the claimant to use the "hands on" approach to the control panel rather than the emergency shut off.

In any event, his ill-advised attempt to strike the control panel with a fist caused the loss of the control panel at a cost of \$2,155.82 to replace it, plus the cost of installation. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of May 30, 2012, reference 01, is reversed. Ricky Holveck is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw