

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD GILMORE
Claimant

APPEAL NO. 09A-UI-03213-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 01/25/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, University of Iowa, filed an appeal from a decision dated February 19, 2009, reference 01. The decision allowed benefits to the claimant, Richard Gilmore. After due notice was issued, a hearing was held by telephone conference call on March 24, 2009. The claimant participated on his own behalf and was represented by Joan Black. The employer participated by Human Resources Specialist David Bergeon, Supervisor Alan Bilman and Plant Manager Ben Fish.

ISSUE:

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

FINDINGS OF FACT:

Richard Gilmore was employed by University of Iowa from August 9, 1993 until January 24, 2009 as a full-time power plant operator. During the course of his employment he had received disciplinary actions including a three-day and a five-day suspension for violation of the employer's policies.

On January 8, 2009, he was assigned to start up a turbine. The procedure to be used is written down and differs somewhat between a "cold" and a "hot" start. With the start being used by Mr. Gilmore, it is recommended the machine be shut down if the temperature exceeds 200 to 220 degrees Fahrenheit. It is left to the discretion of the operator at certain points whether to shut the process down or to put it "on line" and allow the system to cool the turbine automatically. The claimant made the decision to put the turbine "on line" and allow the system to cool it. The temperature had reached in excess of 300 degrees Fahrenheit prior to that but Mr. Gilmore apparently did not believe the readout because he had put his hand somewhere on the turbine and it was not that hot, and he also felt the decals on the side of the machine would have melted if the temperature had been that high.

A supervisor reported the incident to Plant Manager Ben Fish who investigated the incident by reviewing the readouts from the control board and interviewing Mr. Gilmore. The decision was made to discharge him for failing to follow the appropriate procedures.

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.

There is no doubt the claimant showed exceedingly poor judgment by not shutting the machine down when the temperature reached such a high level. The employer did not dispute it is a matter of judgment on the part of the operator whether to shut the machine down or put it on line to allow the system to cool itself. This appears to be an isolated incident of poor judgment rather than a willful and deliberate violation of a known company procedure. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984).

The employer has failed to meet its burden of proof to show a pattern of poor judgment on the part of the claimant which would show a willful disregard for the employer's best interests. Disqualification may not be imposed.

DECISION:

The representative's decision of February, 19, 2009, reference 01, is affirmed. Richard Gilmore is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css