

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS BURKHART
Claimant

APPEAL NO. 06A-UI-11446-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

GKN ARMSTRONG WHEELS INC
Employer

**OC: 10-29-06 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 22, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 13, 2006. The claimant participated in the hearing. David Pietruszynski, Director of Human Resources, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 machine operator for GKN Armstrong Wheels from October 11, 1999 to October 30, 2006. On October 19, 2006, the claimant was accused of throwing rim parts at or near a co-worker. The co-worker complained to management and said he was afraid to work around the claimant because of his anger issues and was considering leaving his job because he feared the claimant. The employer testified it sent the claimant home early that day but the claimant denied that allegation and the Archived Time Card Report (Employer's Exhibit One) shows the claimant was not sent home early that day. The employer investigated the situation and then notified the claimant November 30, 2006, that his employment was being terminated for insubordination and losing his temper at work. On July 6, 2004, the claimant received a written warning and was referred to EAP because of his temper. The manager talked to the claimant several times about his attitude and anger issues but did not document any other warnings until May 2, 2006, at which time the claimant, his supervisor and the human resources generalist, met to discuss the claimant's attitude and behavior. The claimant stated he felt "the place was going downhill" but said he still liked his job. He complained that he often got "stuck" helping other employees and they would not help him at the end of his shift. The employer agreed and stated he should bring his problems to his supervisor rather than taking his anger out on his co-workers. The employer told the claimant it expected him to get along with his co-workers. The claimant had ten points on a 13 point attendance and disciplinary scale as of October 19, 2006. The claimant testified that on

October 30, 2006, he argued with a co-worker about rims after the claimant said the rims were not good and the other employee stated they were. They argued further before the claimant was sent to the office at which time the employer also brought up the October 19, 2006, incident for the first time and terminated the claimant's employment. The claimant denied throwing anything at co-workers October 19, 2006, or that he was talked to or sent home early that day and the employer's payroll records support his contention (Employer's Exhibit One).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (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). While the administrative law judge believes it is more likely than not that the claimant has anger management issues as demonstrated by his behavior and the EAP report, the employer did not provide any first-hand

witnesses to the October 19, 2006, or October 30, 2006, incidents and the claimant denies throwing rims at anyone else, testimony which is backed up by the fact he was not sent home early October 19, 2006, as testified by the employer (Employer's Exhibit One). While not condoning the claimant's actions, the employer did not have enough first-hand information to allow the administrative law judge to find that the claimant's actions constitute disqualifying job misconduct as defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The November 22, 2006, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css