

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LISHA L BURCH
Claimant

OLYMPIC STEEL IOWA INC
Employer

APPEAL NO. 18A-UI-11665-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/22/18
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 30, 2018, reference 04, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 17, 2018. Claimant participated personally. Employer participated by Tyler Johnson, Tracy Delathouwer, and Matt Whitfield. Claimant's Exhibits A-B were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 12, 2018. Employer discharged claimant on November 12, 2018, because claimant was insubordinate about the work that she would do for employer after being warned about being insubordinate.

Claimant was hired by employer in January of 2018. She went through training procedures on the Oxy machine that she was to run. Her training was cut short as she needed to aid other shifts, but did come back to complete her training.

Claimant repeatedly requested to be a machine operator. In October, 2018 claimant was put in a position as an Oxy operator on the third shift. Soon after being placed in that position, claimant's supervisor noticed that claimant wasn't doing the banding and packing of the cut steel. The supervisor requested that claimant do these jobs and claimant stated that she'd never been taught how to do so, even though the supervisor had seen her banding and packing. (Other witnesses had also seen claimant doing these acts). Claimant refused to do the packing and banding, and was suspended for not doing her job. Less than a week later, on November 12, 2018, claimant was again told that she needed to do the packing and the banding. When she stated that it wasn't her job to do this and that other people got paid to do this, claimant was terminated for being insubordinate.

Claimant stated that she'd never fully been trained. She stated that when she was trained, she was told to ignore the instructions as to what was to be done with the steel. (Employer stated that claimant was told to follow the instructions, and her refusal to do so was a large part of her insubordination). Employer responded that claimant was not allowed to be operating the machine without being certified as to every process, including the banding and packing of the steel.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a

material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning people operating an OXY machine to be responsible for all aspects of the machine – including banding and packing. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant refused to do the job she was trained to do in its entirety. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated November 30, 2018, reference 04, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn