

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY TREPTOW
Claimant

APPEAL NO. 10A-UI-15914-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE MAYTAG COMPANY
Employer

OC: 12/27/10
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Timothy Treptow (claimant) appealed an unemployment insurance decision dated November 9, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from The Maytag Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 6, 2011. The claimant participated in the hearing. The employer participated through Charles Amos, Human Resources Generalist. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed full-time from August 16, 1999 through October 18, 2010 and was most recently working as a material handler. He was discharged for leaving company premises on September 17, 2010 outside of a break and without authorization. Employees are not even allowed to leave the facility during a break, let alone outside of a break. The employer's union contract provides that employees can be terminated for leaving the facility without authorization, since it is considered time theft and the employer has zero tolerance for time theft. The union contracts are available for viewing throughout the facility.

The claimant admitted he left the facility without his supervisor's permission but claims it was on a break, since he regularly moved his break times. He went on a non-work-related medical leave on September 20, 2010 and did not return to work until October 18, 2010. The claimant was discharged after he returned from his medical leave.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for leaving the employer's premises on September 17, 2010 without authorization and without being on break. The union contract clearly states that employees can be discharged for leaving the facility without authorization, since it is time theft. The claimant admitted leaving but denies he knew it was against company policy. His claim of ignorance is not credible.

The only question remaining is whether the claimant was discharged for a past act. While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge or disciplinary suspension for misconduct cannot be based on such past act(s). The termination or disciplinary suspension of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to

the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988). The claimant left the facility without authorization on September 17, 2010 but was not discharged until October 18, 2010. However, the claimant went on a medical leave on the following Monday and was discharged on the same day he returned to work. Consequently, the employer had a reasonable basis for delaying his termination. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated November 9, 2010, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw