

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFF M ROWSON**

Claimant

**APPEAL NO. 14A-UI-02901-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ECONOMY COATING SYSTEMS INC**

Employer

**OC: 02/16/14**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jeff Rowson (claimant) appealed a representative's March 7, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Economy Coating Systems (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 8, 2014. The claimant participated personally. The employer participated by Duan Sampson, Human Resources Assistant.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 19, 2013, as a full-time painter helper. The claimant signed for receipt of the employer's handbook on September 19, 2013. The employer issued the claimant written warnings on October 18, November 11, 2013, January 6, and 28, 2014, for absenteeism. The claimant's absences were due to his child's visit to the emergency room, illness, and personal absences. The employer notified the claimant that further infractions could result in termination from employment. On December 30, 2013, the employer issued the claimant a written warning for putting down a hose without following instructions and turning off the machine first. The claimant caused injury to his right knee. The employer notified the claimant that further infractions could result in termination from employment.

On February 11, 2014, the claimant was doing preparation work inside a railroad car by himself. The claimant needed to use picks to stand on so he could work on the ceiling and walls. He had been trained on setting picks but did not remember how to do it properly. The claimant told his supervisor that he did not know how to do this and his supervisor told him to call the lead painter. The lead painter told the claimant he was waiting for word from another person to see when he could come and help the claimant. The claimant told the lead painter that he would figure it out. The claimant proceeded to set the picks even though he did not know how to do

so. On February 11, 2014, the claimant fell and injured his back because the picks were not set correctly and properly strapped down. The employer sent the claimant for medical treatment. On February 19, 2014, the employer terminated the claimant because he was unsafe in the workplace.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). Repeated unintentionally careless behavior of claimant towards subordinates and others, after repeated warnings, is misconduct. Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions and expose the employer to liability. The

claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's March 7, 2014, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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