

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
REUBEN H CASTRO Claimant	APPEAL NO. 12A-UI-06666-AT
GOODWILL INDUSTRIES Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 04/15/12 Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Reuben H. Castro filed a timely appeal from an unemployment insurance decision dated June 4, 2012, reference 04, that disqualified him for benefits. After due notice was issued, a telephone hearing was held June 28, 2012 with Compensation Specialist/Co-Safety Manager Kim Nelson participating for the employer, Goodwill Industries. Employer Exhibit One was admitted into evidence. Although Mr. Castro provided a telephone number at which he could be contacted, the number was answered by a recording at the time of the hearing. The administrative law judge left instructions for Mr. Castro to call while the hearing was in progress if he wished to participate. There was no call.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Reuben H. Castro was employed as a bailer operator by Goodwill Industries from February 16, 2012 until he was discharged April 11, 2012. The final incident leading to discharge occurred on April 11. Mr. Castro violated safety procedures by starting the bailer without first ascertaining that no other employees were in a position in which they could be injured. Mr. Castro had received training on these procedures and had received counseling from his supervisor, Tami Anderson, because of prior safety incidents.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct. It does.

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 evidence in this record establishes several safety violations culminating in a final incident on the date of discharge. The claimant has not rebutted that evidence since he did not participate in the hearing. Benefits are withheld.

DECISION:

The unemployment insurance decision dated June 4, 2012, reference 04, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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