

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGG L INGLE
Claimant

APPEAL NO. 06A-UI-09645-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BENDER FOUNDRY SERVICE INC
Employer

OC: 08/27/06 R: 03
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Gregg L. Ingle (claimant) appealed a representative's September 26, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Bender Foundry Service, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 17, 2006. The claimant participated in the hearing. Joyce Bender appeared on the employer's behalf and presented testimony from five other witnesses, Tim Job, Sheila Ingle, Dave Schwab, Pat Lee, and Mike Green. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 11, 2002. He worked full-time as a machine operator at the employer's sandcore foundry equipment manufacturing business. His last day of work was August 29, 2006. The employer discharged him on that date. The stated reason for the discharge was harassing coworkers after prior warning.

Sheila Ingle is the claimant's ex-wife and also has worked for the employer for some time. Pat Lee is another machine operator for the employer who works in the same area as Ms. Ingle. Mr. Lee frequently rode to work with the claimant, and the claimant was frequently kidding Mr. Lee about his "girlfriend," meaning Ms. Ingle, even though Mr. Lee had an actual girlfriend and was getting tired of the claimant making jokes about Ms. Ingle being his girlfriend. He decided to start kidding back, so on August 29 Mr. Lee passed a message back to the claimant through another coworker, Mr. Green, telling him to ask the claimant how his girlfriend was doing.

When Mr. Green passed on the "question" from Mr. Lee, the claimant was not amused, and walked across the production floor to confront Mr. Lee. When he asked Mr. Lee what he meant by his "question," Mr. Lee responded that the claimant needed to stop teasing him about Ms. Ingle being his "girlfriend" or there would be bigger problems. Ms. Ingle came around the

machine and told the claimant to go back to his work area. The claimant responded by saying, "shut up you f - - - ing w - - - ." Mr. Schwab, the lead person, saw that there was a confrontation occurring and called Mr. Job, the shop supervisor who then intervened.

The claimant had received two prior warnings for harassing employees, one on January 24, 2005 and the other on April 24, 2006. The April 2006 warning also dealt with difficulties he was causing Ms. Ingle in the workplace; he was advised that if there were further problems he would be discharged.

REASONING AND CONCLUSIONS OF LAW:

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. IDJS, 321 N.W.2d 6 (Iowa 1982); 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

The claimant's behavior toward coworkers in the workplace after prior warning shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative’s September 26, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 26, 2006. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/cs