

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

L A TAYLOR
Claimant

APPEAL NO. 08A-UI-06901-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEXTER FOUNDRY INC
Employer

**OC: 06/29/08 R: 04
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

L. A. Taylor filed an appeal from a representative's decision dated July 24, 2008, reference 01, which denied benefits based on his separation from Dexter Foundry, Inc. After due notice was issued, a hearing was held by telephone on August 11, 2008. Mr. Taylor participated personally. The employer participated by Kathy Baker, Human Resources Administrative Assistant. Exhibits One through Ten were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Taylor was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Taylor was employed by Dexter Foundry, Inc. from March 22, 2005 until June 27, 2008. He was last employed full time as a cupola yard man. He was discharged after a series of disciplinary actions.

Mr. Taylor received a verbal warning on May 31, 2006 because he damaged a piece of equipment. He bent the load guard while filling hoppers because there was dust in the air obstructing visibility. He received a written warning on November 21, 2006 when he hit the side of the equipment against a cement pillar. He received another written warning on December 12, 2006 after he referred to a coworker as a "son of a bitch." Mr. Taylor was warned and suspended from work for three days on January 10, 2007 because of damage to equipment. He and three other employees used the equipment and previous damage had not been repaired. Mr. Taylor was charged with damaging the equipment because it broke while he was using it. He was again suspended from work for three days on July 27, 2007 because he was making comments the employer considered threatening.

Mr. Taylor received a verbal warning on August 15, 2007 because he was not wearing safety glasses as required. He received a written warning on November 14, 2007 because he was

operating the yard truck with the door open. He could not see where he was going and hung out the door while he backed up. In doing so, he sprung the door and it would not close.

The final incident that prompted Mr. Taylor's discharge occurred on June 23, 2008. The crane cable broke and the magnet fell to the ground. Mr. Taylor was explaining what happened but did not have his safety glasses on at the time. He was directed to put the glasses back on and he complied. He was suspended on June 24 and notified of his discharge on June 27.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Taylor was discharged due to repeated warnings. Some of the warnings resulted from damage to equipment. The administrative law judge does not believe he intended to damage equipment. He was, however, negligent on May 31 and November 21, 2006, and November 14, 2007 when he damaged equipment. Since several other employees used the crane that was damaged on January 10, 2007, the administrative law judge is not inclined to assign the negligence to Mr. Taylor.

Negligence does not constitute misconduct unless it is so recurrent as to manifest a substantial disregard of the employer's standards. The three incidents of negligence identified herein are not so recurrent as to establish disqualifying misconduct. Mr. Taylor did engage in verbal altercations with coworkers on December 12, 2006 and July 27, 2007. The employer's evidence failed to establish that he was verbally abusive on either occasion. The employer did not present evidence from anyone who witnessed the incidents and Mr. Taylor denied that he was verbally abusive. It is unreasonable to expect employees to be docile and well-mannered at all times.

The employer contended that Mr. Taylor acted in a threatening manner towards a supervisor on June 23, 2008. The employer failed to present evidence from anyone who witnessed the conduct and the employer's allegation of a threat was denied by Mr. Taylor. Although he did not have his safety glasses on when initially speaking with the employer, he did comply with the request to put them on. The employer failed to establish that Mr. Taylor's negligence regarding the wearing of safety glasses was a recurrent rather than isolated problem.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer failed to establish disqualifying misconduct. Although Mr. Taylor may have been an unsatisfactory employee, the evidence failed to establish that he deliberately and intentionally engaged in a course of conduct he knew to be contrary to the employer's standards or interests. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated July 24, 2008, reference 01, is hereby reversed. Mr. Taylor was discharged by Dexter Foundry, Inc. but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css