

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERALD WALVATNE
Claimant

APPEAL NO: 14A-UI-10319-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPTIVE AIRE SYSTEMS INC
Employer

OC: 09/07/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 30, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 22, 2014. The claimant participated in the hearing. Aaron Ryan, Plant Manager; Roger Stahr, Production Supervisor; and Mary Roach, Human Resources Assistant, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general assembly worker on the heater line for Captive Aire Systems from February 8, 2012 to September 13, 2014. He was discharged for committing a group I inexcusable offense September 11, 2014.

The claimant worked the 6:00 a.m. to 2:30 p.m. shift with two hours of overtime when needed by the employer. The claimant was required to use personal protective equipment (PPE) in his position with the employer. Specifically, and relevant to this case, the employer provided gloves to be worn by the assemblers. The gloves are made of a rubber compound with a cut-resistant fiber.

On September 11, 2014, around 6:15 a.m., the claimant had a confrontation with Supervisor Pat Rothmeyer over the misuse of the gloves. The claimant was using a rivet gun and wanted to use the gloves to catch the spent rivet mandrels. He testified he did so to prevent the rejected rivets from hitting him in the arms but the rivet gun comes with a catcher to prevent the rivet mandrels from hitting the assembler or the floor. If they did hit the floor the assembler had to sweep them up and sometimes blow them out from underneath the rollers. Using the gloves to catch the spent rivets was not the way the gloves were intended to be used and was not within the PPE specifications.

Mr. Rothmeyer told the claimant not to use the gloves in that manner and the claimant became "very upset and combative" toward Mr. Rothmeyer. The claimant stopped work on his line and because his line is fairly short the confrontation could be observed by other employees and supervisors. As the situation escalated Mr. Rothmeyer sought the assistance of Supervisor Rachel Johnson from an adjacent line and the incident grew more heated with the claimant using profanity when speaking to Ms. Johnson, stating, "This is fucking bullshit." Ms. Johnson then made the decision to contact Production Supervisor Roger Stahr.

When Mr. Stahr arrived he asked the claimant to calm down but the claimant became more "belligerent" and repeatedly stated, "This is fucking bullshit." The claimant then said he was going to the office to tell them that and Mr. Stahr told the claimant he was not going to the office and again asked him to please calm down. The claimant continued his loud behavior and Mr. Stahr told him he was suspended September 12 and 13, 2014, and notified him the employer would contact him by September 13, 2014, to let him know the status of his job. Mr. Stahr walked the claimant to the time clock and then out the door due to his concern the claimant could become physical as a result of the confrontation. Another contributing factor in Mr. Stahr's decision to send the claimant home was this was not the first time the claimant became agitated at work.

It is not uncommon for profanity to be used on the production line when employees are talking amongst themselves. The difference in this case was that the claimant used profanity in anger and was red-faced and shouting when he used profanity directed at supervisors, including Mr. Stahr, and Mr. Stahr believed the situation could degenerate into a physical confrontation.

The claimant received a verbal warning June 17, 2013, for a group I inexcusable offense for using abusive and threatening language in the presence of a co-worker or supervisor. He was upset about not receiving a screwdriver right away in the morning when he asked for it. The warning also cited the claimant's behavior in interfering or interrupting the work of others. He was told his behavior would not be tolerated and he needed to show immediate and sustained improvement.

The claimant stated that on September 11, 2014, he went to Mr. Rothmeyer to ask for gloves to catch the rivet mandrels and to prevent him from being hit by the rivets. The claimant testified he had used the gloves in this manner in the past and does not recall the employer ever speaking to him about that usage in the last year. He asked for gloves because there were none on his line like there had been in the past. A box of gloves usually lasts several months. Mr. Rothmeyer and another line worker both said there were not any gloves on his line and told him to talk to his supervisor and the claimant went to line three to look for gloves but did not find any there. The claimant went back to Mr. Rothmeyer and stated they did not have any gloves on line three either and he was done messing around going from one line to another and the gloves were for people to use as PPE and for the claimant to catch the spent rivets. Mr. Rothmeyer said they put the gloves in the office and the claimant would have to get them from there. The claimant asked when that happened and Mr. Rothmeyer said a "little over one month ago." The claimant replied it "would have been nice to be informed of what was going on." The claimant admits he was a little "boisterous." The claimant stated he became extremely upset because he was trying to get things done, he did not have the equipment he needed and he was going from line to line which slowed production.

The claimant agrees Mr. Rothmeyer was not responsible for the other lines and would not have necessarily known if the other lines still had gloves in their boxes. At the direction of the employer, employees reuse the gloves several times. Mr. Rothmeyer told the claimant he was not responsible for reporting things of that nature to the claimant and the claimant said, "What's

the job of a line leader.” Mr. Rothmeyer did not like the claimant’s attitude and called Ms. Johnson from line one. Mr. Rothmeyer explained the gloves cost money and the claimant agreed but Mr. Rothmeyer stated, “No. You don’t. Otherwise, we wouldn’t be having this problem with the gloves” and the claimant said, “Everything costs money and it is called an operating expense. Some things are used to run a business safely.” Mr. Rothmeyer then called Mr. Stahr and told him what was going on and told Mr. Stahr he did not like the claimant’s attitude in regard to the problem with the gloves. Mr. Stahr told the claimant to pick up his things, punch out, and not to come back until the employer called him. Mr. Stahr then walked the claimant to the time clock and to the door. The claimant denies using profanity and stated he never uses profanity.

Plant Manager Aaron Ryan testified that he had worked for the employer since 2008 and has never seen an employee use a glove in the manner the claimant was in an effort to catch spent rivets. He indicated there are factory issued catchers that come on the rivet guns. If the claimant or any other employees removed the catchers so they can get closer their supervisor should have been notified. The gloves are only to be used as PPE and approximately three months earlier the employer made the decision to remove the boxes of gloves from each line and place them in the office because some employees were using them once and throwing them away or using them inappropriately.

After reviewing the claimant’s prior incident of angry outbursts, each of which could have been easily handled professionally without escalation, the employer made the decision to terminate the claimant’s employment and notified him September 13, 2014.

There were only two general assembly employees who used the gloves to catch the spent rivets. The claimant secured an affidavit from co-worker Chris Ruroden stating he did not hear any profanity from the claimant. The claimant did not know how far away Mr. Ruroden was during the incident and he wrote the affidavit for Mr. Ruroden and Mr. Ruroden signed it.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was inappropriately using the gloves to catch spent rivets rather than strictly as PPE. Given that his actions were not sanctioned by the employer, it was even more inappropriate for him to challenge the employer about not providing the gloves on the floor for him to use to catch rivets. Rather than accepting the situation, the claimant escalated it, became very irate and upset, and his actions resulted in Mr. Rothmeyer calling Ms. Johnson over. Rather than calming down as asked, the claimant worsened the situation by continuing to argue and also used profanity by telling Ms. Johnson, "This is fucking bullshit." That prompted Ms. Johnson to call Mr. Stahr who tried to stabilize the situation and also told the claimant to calm down but instead he continued his outburst and also told Mr. Stahr several times, "This is fucking bullshit." Because the claimant would not refrain from his loud, angry and profane language and behavior the employer sent him home until it could notify him whether his employment was terminated.

While the claimant preferred to use the gloves to catch the spent rivets that was not included in the employer's stated usages of the gloves as PPE. If the claimant was experiencing difficulty with the rivets hitting his arms or did not want to sweep them up from the floor, he should have simply asked his supervisor for a rivet gun that had a spent rivet catcher as provided on the rivet guns from the factory.

The claimant had been warned about an inappropriate outburst just over one year earlier and was told that type of behavior would not be tolerated and he needed to demonstrate immediate and sustained improvement. The claimant's actions September 11, 2014, were not only unnecessary, but were inappropriate and unprofessional, and were a distraction to other employees in addition to ceasing production on the claimant's line during the incident.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's

interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The September 30, 2014, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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