

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHADRICK T BESTMAN
Claimant

TPI IOWA LLC
Employer

APPEAL 19A-UI-05647-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/16/19
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On July 16, 2019, the claimant filed an appeal from the July 15, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephonic hearing was held on August 8, 2019. The claimant, Shadrick T. Bestman, participated. The employer, TPI Iowa, L.L.C., participated through Danielle Williams, Senior Human Resources Coordinator. Employer's Exhibits A1 through A4, B1 through B21, C1 through C7, and D1 through D2 were received and admitted into the record over objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a crane operator, from April 8, 2013, until June 18, 2019, when he was discharged for a safety violation.

Claimant's job entailed lifting pieces out of molds and moving them around in the employer's plant. On June 6, 2019, claimant lifted the 33,000 pound gantry out of the mold while a quality associate was inside the mold. If the gantry would have malfunctioned or broken, this could have resulted in fatality. Additionally, claimant failed to have someone watching the tip when he lifted the gantry.

The employer conducted an investigation into this incident on June 14, 2019. They took statements from both claimant and the employee inside the mold. (Exhibits A3 and A4) When the employer reviewed the incident with the claimant, the claimant said he did not see the associate underneath the gantry. (Exhibit A4) Claimant also argued that he had someone watching the tip. (Exhibit A1) Claimant was suspended pending further investigation, and he was discharged four days later.

Claimant had numerous prior safety warnings. These warnings occurred between December 17, 2014, and January 17, 2019. Most recently, claimant was warned for leaving the tip of the mold before making sure the mold was clear. (Exhibit B1)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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 Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's testimony and exhibits credible. The employer provided written statements and emails from the date of the investigation into the final incident of misconduct. These documents are credible evidence.

In this case, the final incident involved claimant lifting an approximately 30,000 pound object into the air while a co-worker was directly beneath it, inside the mold. This could have resulted in the co-worker being killed. Claimant had warnings in the past for safety issues. The average employee in claimant's situation would certainly know his job was in jeopardy. The employer has established through credible evidence that claimant was discharged from employment due to disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The July 15, 2019, (reference 01) unemployment insurance decision is affirmed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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