

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS AMUNDSON
Claimant

APPEAL NO. 07A-UI-05706-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REFRACTORY & INSULATION SUPPLY INC
Employer

**OC: 05/06/07 R: 04
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Refractory & Insulation Supply, Inc. filed an appeal from a representative's decision dated May 29, 2007, reference 01, which held that no disqualification would be imposed regarding Nicholas Amundson's separation from employment. After due notice was issued, a hearing was held by telephone on June 25, 2007. Mr. Amundson participated personally. The employer participated by Chad Rickertsen, Engineering Production Manager, and Dennis Broughton, Production Superintendent.

ISSUE:

At issue in this matter is whether Mr. Amundson 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. Amundson was employed by Refractory & Insulation Supply, Inc. from July 31, 2006 until May 10, 2007 as a full-time construction laborer. He was discharged for damaging equipment and not wearing safety glasses as required. He was also discharged because of his attendance.

Mr. Amundson received a written warning after he was absent without calling in on January 25, 2007. He was again absent without calling in on March 7 and, as a result, received an additional written warning. On this occasion, he had gone out to eat with the crew while working in Duluth, Minnesota. He did not arrive back to his hotel room until 3:45 a.m. and slept until 4:30 p.m. Mr. Amundson requested and was granted May 3 and 4 off. He left work at lunch time on May 2 although he had not requested to have time off on that date. His production manager advised him that the time off had not been approved but Mr. Amundson left anyway. He was to return to work on May 7 but called to indicate he would be absent. He remained off work on May 7 because he was still out of town for personal reasons.

On May 10, Mr. Amundson struck a door while using the overhead crane. He was given a written warning but refused to sign it because he did not feel it was warranted. He felt the

incident was caused by the crane “drifting” and not any error on his part. He was not told he would be discharged if he did not sign the warning. He was discharged the same day. In making the decision to discharge, the employer also considered the fact that Mr. Amundson did not always wear safety equipment. A customer in Wisconsin indicated Mr. Amundson could not return to a job site because of his failure to wear a hard hat and safety glasses as required.

Mr. Amundson filed a claim for job insurance benefits effective May 6, 2007. He has received a total of \$2,121.00 in benefits since filing his claim.

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). Part of the reason for Mr. Amundson’s discharge was his failure to sign the written warning on May 10, 2007. However, he was not told that he would be subject to disciplinary action for not signing the warning. Therefore, his failure to sign the warning to acknowledge its receipt was not an act of misconduct.

Mr. Amundson was also discharged because of his attendance. The final absence occurred on May 7. Although he was not disciplined specifically for this incident, it did play a part in the decision to discharge. Although he was allowed to continue working after May 7, the administrative law judge concludes that it was a current act in relation to the May 10 discharge. Mr. Amundson had four periods of unexcused absenteeism during a period of approximately four months. The absences of January 25 and March 7 are unexcused as they were not properly reported to the employer and the evidence failed to establish any good cause for the failure to report the absences. The absence on the afternoon of May 2 is unexcused as it was for personal reasons and was not approved in advance. Mr. Amundson left work early to go out of town although he was told the absence was not approved. His absence of May 7 was for personal reasons. Although his brother was going through a custody dispute, Mr. Amundson was not absent on May 7 for court or other legal proceedings. He had been warned about his attendance on two occasions. In spite of the warnings, Mr. Amundson did not take those steps necessary to conform his attendance to the employer’s expectations.

The administrative law judge considers four unexcused absences during four months to be excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. Mr. Amundson’s attendance is sufficient, standing alone, to constitute disqualifying misconduct. Accordingly, benefits are denied. Mr. Amundson has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative’s decision dated May 29, 2007, reference 01, is hereby reversed. Mr. Amundson was discharged for misconduct in connection with his employment. Benefits are

withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Amundson has been overpaid \$2,121.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs