

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY JEPSEN
Claimant

APPEAL NO: 11A-UI-12818-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AG PROCESSING INC
Employer

OC: 08/21/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jeremy Jepsen (claimant) appealed an unemployment insurance decision dated September 22, 2011, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from AG Processing, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 28, 2011. The claimant participated in the hearing. The employer participated through John Ramsey, plant superintendent; Brandon Summerfield, utility operator; and Tom Kuiper, employer representative. Employer's Exhibit One was admitted into evidence. 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:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed full-time from October 16, 2000 through August 26, 2011, when he was discharged for a violation of plant work rules. The employer has numerous plant work rules, and violation of several of those plant rules can subject the employee to immediate termination of employment. The claimant was hired as a utility then was promoted to a meal load out. Eventually, he became an extraction operator, wherein he worked with the highly explosive solvent hexane. The claimant was a boiler operator but was demoted in the last few years back to a utility as a result of a safety violation. He failed to shut off a breaker panel, which was a violation of the lock out/tag out procedure.

Plant Superintendent John Ramsey has been with the company over four years and he has personally coached the claimant about violation of safety rules. In the hearing, he estimated he had talked to the claimant at least five times and possibly more. These warnings were in addition to the warning that resulted in the claimant's demotion.

The employer prohibits smoking on plant property in prohibited areas. There is a break room in which employees are allowed to smoke. Violation of this policy can result in immediate termination, due to the fact that smoking could cause an explosion resulting in the possible loss of life and property. The employer works with a solvent called hexane, which is highly explosive. The plant superintendent testified that the vapors area is heavier than air and there are signs posted that there is no smoking on plant property. Additionally, the employer works with soybean meal and the dust from the meal is also explosive. The claimant was discharged after he was seen smoking in the meal load out area on August 24, 2011. He admitted to the plant superintendent that he was smoking in the meal load out area.

REASONING AND CONCLUSIONS OF LAW:

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

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on August 26, 2011 due to violation of a serious safety rule. His actions could have resulted in an explosion and a potential

loss of life. The claimant had previous warnings for safety violations. His conduct 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated September 22, 2011, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw