IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARK CALLAHAN
Claimant

TIMBERLINE MANUFACTURING COMPANY
Employer

APPEAL NO: 14A-UI-02617-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/09/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 26, 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 April 1, 2014. The claimant participated in the hearing. Jennifer Lawrence, Human Resources Manager, 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 production associate for Timberline Manufacturing Company from September 17, 1997 to January 16, 2014. He was discharged for violating the employer's safety policy four times in a rolling calendar year.

The employer's policy states that if an employee violated a safety rule on four occasions during a rolling calendar year his employment will be terminated. The claimant failed to wear his safety glasses and received written warnings from the human resources department February 14 and July 22, 2013. He signed both warnings. He was observed without his safety glasses on again December 31, 2013, and received a final written warning from the president of the company. He was told at that time that if it happened again his employment would be terminated. On January 14, 2014, two employees separately witnessed the claimant without wearing his safety glasses, once in the morning and once in the afternoon, while in the production area and reported the situations to human resources. Human Resources Manager Jennifer Lawrence asked the production manager if either of the witnesses told the claimant he needed to put his safety glasses back on and was told Team Leader Veronica Hanna did so that morning. On January 15, 2014, Ms. Lawrence interviewed both witnesses individually and then spoke with the claimant. The witnesses confirmed the claimant did not have his required safety glasses on when working on the production floor. The claimant originally denied that he did not have his safety glasses on at least twice the preceding day but after being reminded of the

circumstances the claimant was able to recall the situations but believes he may have been on his way to break when the afternoon incident occurred. The claimant stated he did recall receiving the final written warning from the president of the company and acknowledged that he knew his job was in jeopardy because the president of the company told him so. After reviewing the situation, the employer terminated the claimant's employment January 16, 2014.

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 section 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 claimant violated the employer's safety rules by failing to wear his safety glasses as required in the production area on at least four separate occasions between February 14, 2013 and January 14, 2014, after being warned following the first three occurrences. While the claimant believes the reason given by the employer for his termination is a ruse and that the real reason he was discharged was because he had ankle and hip issues, had been off for one surgery and would be off for another in the future, and the employer had lost confidence in the claimant's ability to perform his job and he may be correct, there is simply no proof that is the actual reason for the claimant's dismissal.

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 must be denied.

DECISION:

The February 26, 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.

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Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/css