

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY HENDERSON
Claimant

APPEAL NO: 06A-UI-08640-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE DEXTER COMPANY
Employer

**OC: 08/06/06 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The Dexter Company (employer) appealed an unemployment insurance decision dated August 24, 2006, reference 01, which held that Larry Henderson (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was on September 13, 2006. The claimant participated in the hearing. The employer participated through Kathy Baker, Human Resources Secretary and Greg Hanshaw, Human Resources Supervisor. Employer's Exhibits One and Two and Claimant's Exhibit A were 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 employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time mill room grinder for this foundry from October 18, 2004 through July 31, 2006 when he was discharged for repeated safety violations. He did not receive warnings for these incidents but had to go to the emergency room on November 8, 2004 for a burn and laceration of his left index finger and on March 1, 2006 for a laceration of the right thumb. A verbal warning was issued on April 5, 2006 for grinding in an unsafe manner. He was leaning on the machine and with his left hand and using his right hand to grind a casting on the wrong side of the sander, which caused sparks to fly into his face. The claimant went to the emergency room on July 13, 2006 for an abrasion injury to his left index finger. A written warning was issued for that incident since he was grinding castings in an unsafe manner. He had his T-rest three-fourths of an inch away from the wheel when it is only supposed to be one-eighth of an inch away. The claimant was warned that further unsafe activity or safety violations would result in his termination.

The final incidents which resulted in his suspension on July 27 and termination on July 31, 2006 was his failure to wear protective gloves on July 24 and safety glasses on July 25. The claimant stated he had a tiny pinhole in his safety gloves and was not wearing his safety glasses because he forgot them in the bathroom. After he went back to get them, he was going on break so did not put them back on.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 for repeated safety violations according to the employer's progressive disciplinary policy. The final incidents prompting the

discharge involved a tiny pinhole in his safety gloves and not wearing his safety glasses because he was going on break. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. While the claimant's discharge was appropriate per the employer's disciplinary policy, the final acts fall short of willful misconduct. Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The unemployment insurance decision dated August 24, 2006, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/cs