

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEORGE MORRIS
Claimant

APPEAL NO: 13A-UI-10821-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

HYPRO INC
Employer

OC: 08/25/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 16, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on October 15, 2013. The claimant participated in the hearing. Amanda Schneider, Human Resources Leader; Jim Reeves, Second Shift Supervisor; and Joshua Blake, Production Manager; participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 second shift, full-time machine operator for Hypro from January 28, 2013 to August 22, 2013. He was discharged after being accused of pulling used inserts out of one tool and putting it into the tool/machine he was working on rather than going to the tool crib to get new ones from the tool crib attendant, after being told not to do so.

On August 21, 2013, Machine Operator Justin Payne told Second Shift Supervisor Jim Reeves that he observed the claimant taking one of the very small, worn insert pieces from his machine and exchanging it with the inserts from a part of another machine. Mr. Payne was approximately 100 feet away from the claimant. Mr. Reeves reported the incident to Production Manager Joshua Blake. Mr. Blake spoke to the witnesses and inspected the machine the claimant was alleged to have switched inserts on and found an insert was loose. The inserts are the same on each machine and if an operator knows how to install them on one machine he knows how to install them on all. Operators are told to check their machine's inserts before each shift but they do not always do so. If the claimant had switched inserts and placed the worn inserts into another machine, it could have caused that machine to crash and a part could fly off the machine and injure the operator. After considering the severity of the situation the employer terminated the claimant's employment August 22, 2013, for violating the employer's quality and safety standards.

Mr. Reeves spoke to the claimant approximately one week before his termination after hearing rumors the claimant was putting his used inserts inside another machine and putting that machine's inserts, run by the third shift, into his machine. The claimant admitted to switching inserts when confronted by Mr. Reeves at that time and stated he did so to save time and get more parts out. Mr. Reeves told him that was a quality and safety issue and after that was made clear to the claimant he did not switch parts from one machine to another again.

The employer had been experiencing quality issues and believed the claimant had been switching parts for a period of time and that was what caused the quality problems. The employer tracks the life of the inserts and writes down how many parts are run on it before it is changed to insure safety to the operators and quality parts for its customers.

The employer does not have an employee handbook. The claimant was briefly trained by an operator from first shift who would stay after his shift to help train the claimant. That was the only training the claimant was given and that operator instructed him to switch the inserts and then take the worn inserts to the tool crib at the end of his shift, which is what the claimant had been doing, after he clocked out.

The claimant had received a verbal warning regarding his attendance because he had several absences due to properly reported illness. The employer does not have a written attendance or disciplinary policy. The employer warned the claimant August 20, 2013, that if he missed another day due to illness his employment would be terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant credibly denied placing his worn inserts into another machine and taking that machine's newer inserts after being told he could not do so by Mr. Reeves approximately one week prior to his discharge date. The employer relied on the word of two other operators but did not make those operators available to give testimony or be questioned during the Appeal hearing. The claimant's first hand testimony carries more weight than the employer's second hand testimony.

The employer does not have an employee handbook or a stated disciplinary policy. Consequently, the employees do not know what will happen if there is a violation of the employer's policies and procedures. Additionally, the employer did not issue the claimant a written warning for his actions the week before his termination and although both parties agree the claimant was told not to continue those actions, the claimant denies ever doing so after Mr. Reeves told him he could not switch the worn parts. While safety and quality are always significant requirements, there is not enough evidence to conclude the claimant engaged in this behavior after being told it was prohibited by Mr. Reeves. This incident was cited as the sole reason for the claimant's termination from employment.

Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The September 16, 2013, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css