

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID A PAULSON
Claimant

APPEAL NO: 10A-UI-00596-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WOODHARBOR MOLDING & MILLWORK
Employer

OC: 09/06/09
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's January 5, 2010 decision (reference 01) that concluded he was not qualified to receive benefits, and the employer's account was exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on February 22, 2010. The claimant participated in the hearing. Diane Kafer, Robin Bathke, Scott Hansen, Kim Koster and Adam Boggs appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 21, 2005. The claimant worked as a full-time production operator. His lead person was Hansen.

During his employment the employer gave him several written warnings for getting upset at work and getting into verbal confrontations with co-workers. The employer gave the claimant written warnings on August 6, 2008, for using profanity when he became upset with a co-worker. On April 1, 2009, the claimant received another written warning for getting into a verbal confrontation with Hansen about a day's work priorities. Even though the April 1, 2009 written warning indicated the next time he became upset and swore at an employee he would be discharged, the claimant assumed the employer would at the most suspend him, but not discharge him. The claimant understood the employer did not want him to swear at co-workers.

On September 24, the claimant was trying to do his job and the machine he worked with was not working. Maintenance personnel had looked at the machine the day before and repaired it. New parts had been ordered for the machine. When the claimant told Hansen that the machine still was not working, Hansen told the claimant to deal with the situation because maintenance personnel had worked on the machine the other day and were busy fixing other machines that

day. The claimant understood Hansen would not contact maintenance to repair his machine that day.

The claimant went back to work and became more frustrated when the machine was not working correctly and he could not do his job satisfactorily. The parts the claimant tried to run were not being done correctly. When the claimant saw Boggs, the maintenance lead, he yelled some profanity at Boggs to get his machine fixed. Boggs did not say anything to the claimant because a part had already been ordered and Boggs did not want to get into a yelling match with the claimant. Boggs did not appreciate the claimant swearing at him and reported the incident to Hansen.

Koster, co-worker, went to help the claimant because she noticed he was frustrated and had problems with his machine. Even though the claimant told her not to put a part through the machine, she did. The claimant became even more upset when she did exactly what he had told her not to do. Koster left because the claimant was upset and he tossed bad parts into a pile of bad parts and was cussing. The way the claimant was throwing parts while he was so upset bothered Koster. Koster told Hansen she was not going to help the claimant when he threw a temper tantrum. Boggs told Hansen he did not want the claimant working by the maintenance shop. Before Hansen transferred the claimant to another job, away from the maintenance shop, the claimant had fixed the machine so it ran properly.

September 28 was the first time the employer talked to the claimant about his conduct on September 24. While the claimant understood his machine had not been working, the employer was concerned about the claimant's actions toward others that morning. Later on September 28, the employer discharged the claimant for creating a hostile work environment on September 24. On September 24, the claimant was not upset or angry at any person. Instead, he was upset and frustrated with the machine that was not working properly.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew the employer did not want him to swear at co-workers when he was upset. The employer gave the claimant warnings about his conduct when he became upset. On September 24, the claimant was justifiably upset when his machine was not working and it had been "repaired" the day before. The claimant also knew that he was required to go to Hansen and report equipment problems so Hansen could inform maintenance that a machine needed repairs. Before the claimant said anything to Boggs, Hansen had already told the claimant to deal with the problems he was having with his machine. When the claimant "lashed out" at Boggs who just happened to walk by the claimant, the claimant crossed the line. He swore at Boggs and treated Boggs in a manner that Boggs did not want the claimant working near the maintenance shop. Since the employer previously warned the claimant to keep his temper under control and that he could not swear at employees when he was angry, the claimant's

conduct toward Boggs on September 24 constitutes work-connected misconduct. Therefore, as of September 6, 2009, the claimant is not qualified to receive benefits.

DECISION:

The representative's January 5, 2010 decision (reference 01) is affirmed. The employer discharged the claimant on September 28, 2009 for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 27, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css