

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE J BOILEAU
Claimant

APPEAL NO. 08A-UI-00729-M

**ADMINISTRATIVE LAW JUDGE
DECISION**

ENGINEERED PLASTIC COMPONENTS INC
Employer

**OC: 12/23/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated January 14, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 2, 2008 at Ottumwa. Claimant participated personally with witness Randy Boileau. Employer participated by Daniel Kargarzadeh, Director of Human Resources and Dale Woods, Production Supervisor. Exhibits One and Two were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 26, 2007.

Claimant was discharged on December 26, 2007 by employer because claimant refused to change to a different press. Another operator had gotten behind. Claimant was ordered to take over and catch up for the other operator. Claimant had previously worked on the other press. Claimant had received blisters on his hands from running the other press. Claimant told the supervisor he did not want to run the press due to his previous experience with blisters. Claimant was ordered to run the machine or face discharge. Claimant had no prior warnings on his record. Claimant was a fast worker with a clean record of employment.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning insubordination. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant was afraid of injury on the other press. Refusing a job due to fear of injury is good cause for refusal of work. Furthermore, the lack of a prior warning detracts from a finding of intentional conduct on claimant's part. This is an isolated instance of poor judgment on a clean record of employment. While claimant probably should have ran the job until he started to have problems, it nevertheless is not misconduct. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated January 14, 2008, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css