



The Employer held a meeting with the Claimant to discuss the safety incident involving his failure to wear a Kevlar glove. The Employer questioned him about whether he believed in following rules. Claimant became upset because he had been there for five years without any safety incidents.

Based on the Claimant's attitude during that meeting, the Employer decided to terminate Mr. Kubicek. The Claimant had never received any verbal or written warning regarding any safety issues in the past.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 96.5(2)(a) (2013) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665, (Iowa 2000) (quoting *Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993)).

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 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 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Claimant's version of events. The Claimant admitted only using the trim tool without the Kevlar glove, even though he had received training. He provided a cogent explanation for how it came to be that he didn't have the glove on, which we find credible. Both parties admit that he had never received any prior warnings, verbal or written, for previous safety violations. And even by the Employer's own admission, an employee having one incident would not necessarily be terminated.

Mr. Kubicek did not intentionally disregard Mr. Sosa's attempt to warn him about his lack of a glove; rather, his momentary glance did not capture Sosa's hand signal, which we also find credible. The Employer implies that the Claimant would not have been terminated ("...his fate was not sealed..." but for his belligerent attitude during the meeting. We don't condone Mr. Kubicek's argumentative outburst. However, based on this record, we conclude that this was an isolated instance of poor judgement that didn't rise to the legal definition of misconduct.

**DECISION:**

The administrative law judge's decision dated October 8, 2015 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, he is allowed benefits provided he is otherwise eligible.

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Kim D. Schmett

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