

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN M BOTHWELL
Claimant

APPEAL NO. 12A-UI-07749-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRESLINE PLASTIC PIPE CO INC
Employer

OC: 05/27/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 18, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on July 19, 2012. Claimant participated. Employer participated through Plant Manager Ralph Mericole and Second Shift Supervisor Roger Hite.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an inspector from 2006 and was separated from employment on May 25, 2012. On May 24 Hite told claimant over the intercom that if he did not check the print, he had coil to grind, because there was a print error on the pipe. Claimant went to do so and was feeding the coil into the grinder and checked a sample when the grinder was full. He tossed the 12 inch piece into a nearby scrap bin and Hite yelled and cursed at claimant for doing so. They argued in his office about claimant being singled out on the intercom when others were also responsible for checking the print. Claimant told him, "You know the day I'm having and you keep jumping down my throat for every little thing." Hite responded, "Yeah, it's your fucking job." Claimant said he should have just called in. Hite told him to "go the fuck home." Claimant said he did not want to go home, but Hite told him he would clock him out if he did not leave. Mericole warned him on March 24 and 25, 2008 for arguing with another supervisor and employee respectively.

REASONING AND CONCLUSIONS OF LAW:

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

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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). If management wishes to be treated with respect, it must enforce respectful treatment amongst coworkers and supervisors and apply those expectations consistently throughout the chain of command. Since Hite treated

claimant disrespectfully by chastising him over the intercom, arguing with him and verbally abusing him, his frustrated response does not rise to the level of disqualification, especially when the only other vague warnings were on back-to-back days more than four years earlier. Benefits are allowed.

DECISION:

The June 18, 2012 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw