IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANDREW J HAMILTON
Claimant

SIEMENS ENERGY INC
Employer

APPEAL NO: 15A-UI-07061-LDT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/24/15
Claimant: Respondent (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Siemens Energy, Inc. (employer) appealed a representative's June 9, 2015, decision (reference 01) that concluded Andrew J. Hamilton (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 27, 2015. The claimant participated in the hearing. Mike Rowland 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on March 5, 2010. He worked full-time as a crane operator on the third shift. His last day of work was on the evening of May 8, 2015. The employer suspended him on that date, and discharged him on May 20, 2015. The reason asserted for the discharge was violation of safety standards.

The claimant had come in for overtime prior to the start of the regular shift on May 18, arriving at about 7:05 p.m. He was in the work area at about 7:25 p.m. in the area where another crane operator, who was actually operating the crane at that time, was about to lift a lid off of a mold. He was working in the area to assist in freeing the seal which was sticking to the lid. Another crane operator was also assisting in the area. There was also a spotter directing the operator who was moving the crane. Shortly before the lid was lifted the claimant went up to the area near the lid to kick some blocks to help in loosening the lid; prior to doing so, he communicated with the operator moving the crane by hand signals that he was going to do so.

After the move was accomplished, the spotter reported to a supervisor that the claimant had been "swinging from the lid," and generally should not have been in the work area. The claimant denied that he had been swinging from the lid, and another employee subsequently backed the claimant's denial; the employer did not pursue that allegation in the hearing. However, the employer subsequently determined that the claimant should not have been in the work area, and that he therefore committed a safety violation. As the claimant had previously been given a written warning on a safety issue on November 13, 2013, and a final warning on a safety issue on September 11, 2014, the employer determined to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the conclusion that he committed a safety violation on May 18, 2015, after safety violations in the past. The employer relies exclusively on the second-hand account from other employees to assert that the claimant did not have a legitimate reason to be in the work area and that he had taken proper safety precautions; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the second-hand sources might have been mistaken, whether that person actually observed the entire time, whether those persons are credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of those reports. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact was

not authorized to be working as he was in the work area at the time or that he committed a safety violation. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's June 9, 2015 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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