

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIRK A SWEDBLOM
Claimant

APPEAL NO. 08A-UI-02958-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEE ZEE INC
Employer

**OC: 12/06/07 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Kirk Swedblom, filed an appeal from a decision dated March 19, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 9, 2008. The claimant participated on his own behalf and with a witness Mitch Schipper. The employer, Dee Zee Inc., did not provide a telephone number where a witness could be contacted and did not participate. Exhibits A and B were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Kirk Swedblom was employed by Dee Zee from May 7, 2004 until February 25, 2008, as a full-time welder. He had been working the third shift and requested a transfer to first shift. The request was granted and he signed a document on February 16, 2008, agreeing to the change of shift and a reduction in pay to \$12.00 per hour. The shift change was effective February 18, 2008.

The claimant disagreed his pay should be cut even though he signed the document agreeing to it. He argued with Human Resources Manager Greg Goss and Shift Manager Bud Harris on several occasions about the issue. On February 25, 2008, the claimant was scheduled to work 7:00 a.m. until 3:30 p.m. He had been drinking the night before up until 7:30 a.m., 30 minutes after his shift was scheduled to start. At that time he called in absent saying he was “upset.” He then had a friend drive him to the facility between 8:30 and 9:00 a.m. where he again argued with Mr. Goss about the pay cut. He was told he had agreed to the pay rate and was sent home.

Later in the evening, around 5:00 p.m., he again went to the facility to talk with Mr. Harris and a Jesse Cress about the pay cut. He was again sent home because he still smelled of alcohol and was confrontational. He came back again in approximately 15 minutes and at that time he

was told he was discharged. The next morning he called Mr. Goss and was told he was fired because he “came to work asking to be fired.”

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.

The claimant's own testimony was he was discharged after calling in absent on February 25, 2008, because he was “upset,” and then coming to the facility while intoxicated and confronting the human resources manager about his pay cut. The claimant was fully and fairly informed of the conditions of his transfer to the first shift, at his request, but seemed to feel he should not have to abide by the terms of the agreement he signed.

He continued to come to the facility and confront members of management that day, and continued to be argumentative. He was also on company property under the influence of alcohol in addition to being absent without reporting in a timely manner and due to personal problems, which is not an excused absence. See Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of March 19, 2008, reference 01, is affirmed. Kirk Swedblom is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs