

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRUCE A NIELSEN
Claimant

APPEAL NO. 12A-UI-09037-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLUE RIDGE PAPER PRODUCTS INC
Employer

OC: 06/10/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated July 19, 2012, reference 02, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 6, 2012. The claimant participated personally. Norris Hartman, local president 761 USW, was a witness for the claimant. The employer did not show up for the hearing and did not participate in the hearing.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures milk and juice cartons at its plant in Clinton, Iowa. The claimant was hired on October 1, 1975. His last day of actual work was June 5, 2012. He was terminated on June 14, 2012.

The incident that led to the claimant's termination occurred on June 5, 2012. One of the claimant's job responsibilities as an auto end loader/skive operator was to repair an auto end loader. There was a mechanical problem present on the machine that had been reported to management, safety, and maintenance. This mechanical problem was never repaired. The machine had both a primary and secondary lockout panel. The primary lockout panel was some distance away from the machine, but the secondary lockout panel was next to the machine. The machine could be re-energized by using the secondary lockout panel only. A screwdriver was used to open the panel and a trip switch was hit. This was a "shortcut" that was well known to plant personnel. Foremen on all three shifts had shown employees how to use the shortcut. The claimant had previously used the shortcut and had seen other employees use the shortcut.

The plant manager saw the claimant use a screwdriver to open the door and hit the trip switch. The plant manager felt that this was a safety violation and, as a result, the claimant was suspended on June 11, 2012, without pay. He was then terminated for what the employee deemed gross misconduct. The claimant has filed a grievance with the union and is waiting for his Step Four arbitration hearing.

The claimant had never been written up for a safety violation during the entire time he was employed by this employer.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer can reasonably expect that an employee will follow known safety rules when performing the job. The legal definition of misconduct excludes errors of judgment or discretion or negligence in isolated situations. The employer has the burden of proof to show misconduct.

There is insufficient evidence of misconduct in this record. The employer did not participate in the hearing and the reason or reasons for the claimant's termination are not known. The claimant acknowledged that he used a short cut to re-energize a machine. The testimony from

the union president and the claimant and the statements of other employees show that this short cut was well known to employees and even taught by foremen and team leaders to employees. To the extent there was a rule against using this shortcut, it obviously was not enforced by management and was actually encouraged by management. The most that can be said about the claimant's use of the shortcut was that it represented poor judgment on his part. This is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 19, 2012, reference 02, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw