IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ALLEN D EDFORS Claimant **ARCHER-DANIELS-MIDLAND CO** Employer	**APPEAL 15A-UI-10296-DL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/16/15** **Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the September 3, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on September 24, 2015. Claimant participated. Employer participated through Clinton plant human resource manager Bryce Albrechtsen and plant superintendent Troy Bialas.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a production supervisor from July 22, 1991, and was separated from employment on August 19, 2015, when he was discharged. He was allowed to work and take scheduled vacation from July 31, when he was advised the incident was being investigated further. On July 26 claimant and subordinate employee process operator Larry were working to unplug a process pipe line with a congealed water and dextrose syrup mixture at the valve location. Claimant removed the valve nipple/yellow handle and Larry was present handing him the necessary tools. (Employer's Exhibit 1) They then connected a hot (potentially up to 140 degrees) water line about four feet up the line so the clog would melt and break free from the drain valve and drain into the floor drain. Both were wearing gloves, glasses and safety helmets but it is not usual to wear other water protective gear. Lock-out/tag-out procedures are generally not followed on this daily process. When claimant left for a supervisors' meeting he asked production supervisor Jeff Smith to help Larry and told Larry if the clog breaks free he should turn off the water. When claimant returned he found Larry wet with the water and dextrose mixture. Smith was not present with Larry when the clog broke free and water came out of the drain valve. Instead of merely turning off the water, Larry climbed up on a ladder and reinstalled the drain valve to stop the water flow, which is how he came in contact with the liquid. He was not injured and was able to shower and change. Claimant wrote an incident investigation report. The employer had not previously warned claimant his job was in jeopardy for any similar reasons.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

> (4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The conduct for which claimant was discharged certainly involved poor judgment on the part of at least three people: claimant, Larry and Smith. However, since not locking out lines while unplugging them was the practice rather than the exception and the employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Finally, since the consequence was more severe than other employees received for similar conduct, the disparate application of the policy cannot support a disqualification from benefits.

DECISION:

The September 3, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

_____
Dévon M. Lewis
Administrative Law Judge

_____
Decision Dated and Mailed

dml/css