RYAN T BROMMEL
Claimant

BARILLA AMERICA INC
Employer

APPEAL 16A-UI-08904-LJ-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/27/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 10, 2016, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment due to violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on September 1, 2016. The claimant, Ryan Brommel, participated, and Andy LeGrant, attorney at law, represented claimant. The employer, Barilla America, Inc., participated through Seth Gilland, production manager; Chris Buseman, HR manager; and Jasmina Salkic Kudic, HR generalist.

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, most recently as a packaging operator, from March 14, 2016, until July 21, 2016, when he was discharged for violating safety procedures. On July 16, 2016, claimant was operating the Bosch 253. That morning, he reached around a safety gate on the machine to dislodge a piece of pasta that was stuck. When he reached in, his glove got sucked into the machine and his finger was injured.

Gilland interviewed claimant about this incident and injury the following day. Claimant admitted to Gilland that this was a preventable injury caused by a "stupid mistake." Claimant had received lock-out/tag-out training on a similar machine, Bosch 252. Both Bosch 252 and Bosch 253 have safety gates in place to prevent employees to reach into the machines. Claimant testified that he knew the gate was in place to prevent him from reaching into the machine. He had not received any training or instruction telling him to reach around the gate and into the machine while the machine was operating.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Here, claimant testified that he intentionally reached around the safety gate on Bosch 253 and placed his hand into the running machine. Claimant acknowledged that the gate was put in

place to prevent this precise action from occurring, and he had been trained on a similar machine with a similar gate. No one ever trained him that reaching around the safety gate was acceptable. Regardless of the lock-out/tag-out procedure, claimant's action amounts to intentional misconduct. He put his own safety in jeopardy and acted in deliberate disregard of the employer's interest in maintaining a safe workforce, minimizing workplace injuries, and operating smoothly. The employer has established that claimant engaged in disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The August 10, 2016, (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

_____
Elizabeth A. Johnson
Administrative Law Judge

_____
Decision Dated and Mailed

lj/