IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANTHONY G VATH II
Claimant

ARCHER-DANIELS-MIDLAND CO
Employer

APPEAL NO: 13A-UI-02816-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/10/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Anthony G. Vath, II (claimant) appealed a representative's March 6, 2013 decision (reference 01) that concluded he was not 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 April 5, 2013. The claimant participated in the hearing. Bryce Albrechtsen appeared on the employer's behalf and presented testimony from one other witness, Jason Dolash. During the hearing, Employer's Exhibit One was entered into evidence. 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:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on January 10, 2000. He worked full time as a fibersol operator in the employer's Clinton, Iowa facility. His last day of work was February 4, 2013. The employer suspended him on that date and discharged him on February 8, 2013. The reason asserted for the discharge was a safety violation.

On January 30 the claimant was working a day shift. During the shift the load collector on which he was working became blocked. He and a probationary employee went to the top level of the machine and attempted to dislodge the blockage by banging on the sides of the machine. After this did not appear to work after a considerable period of time, the claimant and the coworker commented to each other that it would be helpful to be able to see into the machine to determine where the blockage was. The claimant then went down to the lower portion of the machine for a few minutes. When he returned, the coworker had removed the four bolts from

the small door area on the machine so he could look into the machine. The coworker then reattached the door to the machine and the two continued with their work.

Dolash, the department superintendent, later came by the machine and saw a portion of fibersol on the decking beside the door. He then realized that this must mean that the door had been opened. Subsequently he verified that the fenwall system on the machine had not been deactivated during the claimant's shift. Immediately above the door which had been opened there is a label which specifies, "Disarm fenwall prior to opening." The fenwall is a pressure activated system employing baking soda used to prevent explosions from spreading. The system would have had to have been locked out and shut down to be disarmed.

When questioned, the claimant acknowledged that the fenwall system had not been disarmed before the door was opened. He indicated that he did not view that failure has having been significant because there were various other machines where there were access doors to check the fibersol where there was no warning requiring the fenwall system to be deactivated prior to opening the access door.

The employer has safety rules of which the claimant was on notice that provide for discharge for a single offense for "willful misconduct or grossly negligent violation of LOTO (lockout/tagout) policy." The employer viewed the claimant's participation in the opening of the door on the load collector without shutting down the fenwall system to be a violation of the lockout/tagout policy. The claimant had most recently received a warning for a safety issue in March 2007; however, the employer did not consider that warning when it determined that the appropriate discipline for the claimant was termination. The employer believed that the claimant had been present for the entire period of when the other employee was opening the door; however, no direct evidence was presented contrary to the claimant's testimony that the coworker had already opened the door when the claimant came back up to the upper deck of the machine. As a result of the employer's conclusions regarding the incident, the employer discharged 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. 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. 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. 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 his involvement with the incident on January 30. First, the employer has not established that the claimant was physically present when the door was actually opened. While the claimant might have had a suspicion, given the comments between himself and the coworker, that the coworker might open the door, and while his failure to understand the seriousness of the requirement that this door not be opened without the fenwall system being shut down even if other access panels could be opened without shutting down the system so that he could have preemptively advised the coworker against opening the panel, these failings do not arise to the level of willful misconduct or gross negligence. Under the circumstances of this case, the claimant's failure to make some attempt to advise the less experienced coworker that the door should not be opened was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. 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 March 6, 2013 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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