

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN R REED
Claimant

APPEAL NO. 10A-UI-15827-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GEORGIA PACIFIC CORRUGATED LLC
Employer

OC: 10/17/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 10, 2010, reference 01, that concluded he was discharged for work-connected misconduct . A telephone hearing was held on January 5, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with his union representative, Mark Cook. Mary Jo Kenneally initially participated in the hearing on behalf of the employer but decided not to participate based on an agreement between the claimant and the employer that included a provision that the employer would not oppose the claimant receiving benefits.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a rotary assistant for the employer from August 3, 2008, to October 14, 2010. On October 11, the claimant was setting up a machine but a broken bolt was preventing him from setting up the die. A coworker handed him a grinder and told him to grind off the broken bolt. Without thinking, the claimant did as his coworker instructed and ground off the bolt so he could set up the machine. A supervisor approached the claimant and told him that he needed to have a hot work permit and wear safety equipment to use the grinder on the bolt. The claimant never received training on exactly when a hot work permit was required and was not aware of the safety equipment he needed to do the work.

The employer discharged the claimant on October 14, 2010, for not obtaining the hot work permit before using the grinder on the bolt.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. At most the evidence establishes an isolated instance of negligence.

DECISION:

The unemployment insurance decision dated November 10, 2010, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs