

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTOR A BENNINGTON
Claimant

APPEAL NO. 07O-UI-09275-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 07/01/07 R: 02
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 25, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on October 17, 2007. Claimant participated. Employer participated through Eric Pederson, Scott Logan, and Kirt Pierson, and was represented by Manija Basherey of TALX UCM Services.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time door repair person at the trim saw from August 6, 2001 until June 27, 2007, when he was discharged for an alleged violation of safety rules by not wearing his safety glasses. On June 26, 2007, claimant's full car ashtray fell on his safety glasses and covered them in ashes. Because he was unable to see through them adequately, he held them in his hand while walking from the entrance directly to his work station, cleaned them, and put them on as he went to the department team meeting several feet away. Pierson observed him and did not instruct him to put them on but said it was "a good thing you put your safety glasses on." Employer's posted policy requires employees to wear safety glasses in the building. No other machines were running in the vicinity. There is no written record of a prior history of failure to wear safety glasses.

On October 18, 2006, he was warned after he threw a paint board (3/4 inch plywood) about 20 feet and hit a piece of machinery. A first warning was issued on November 17, 2004 after claimant became angry and threw a small palm sander on the floor and nearly hit another employee when he threw a door.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, 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 misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a

“wrongful intent” to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. However, his failure to wear safety glasses, opaque with ashes, to his workstation so he could clean them, and while no machines were running in the area, did not rise to the level of substantial, intentional, or disqualifying misconduct. It is reasonable to conclude that walking in the plant with limited vision due to ashes on the safety glasses would inhibit safety as well. Claimant did engage in misconduct that led to warnings in 2004 and 2006. Since there is no misconduct attached to the June 26 incident, the administrative law judge may not consider the history of other incidents. Accordingly, benefits are allowed.

DECISION:

The July 25, 2007, reference 01, decision is reversed. The claimant was discharged from employment for no current disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw