

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

DENNIS L HULL

Claimant,

and

AADG INC

Employer.

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HEARING NUMBER: 10B-UI-06061

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5(2)A

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Dennis L. Hull, was employed by AADG, Inc./Currier-Graham from July 31, 1984 through March 19, 2010 as a full-time production laborer in the manufacturing of and painting of doors. (Tr. 2, 6) The Employer has a personnel handbook that provides "...causes for corrective action...listing for...fighting or using obscene, abusive or threatening language or gestures..." for which the handbook spells out the formal corrective action, i.e., "[f]ormal counseling, written warning, three-day suspension and termination." (Tr. 6) Mr. Hull received correction actions in the past for "...becoming angry or problems with co-workers..." (Tr. 16)

On March 16, 2010, the Claimant and Rick Pierce, a 5-year employee, were painting in an area along with other employees. (Tr. 2) Rick propped open a door to let cooler air into the building. Hull immediately removed the shovel that was propping the door open so as to prevent the recently applied paint from dripping because of the cold air. (Tr. 13-14) A while later, Rick re-propped open the door, and the Claimant closed it again. Rick later placed a piece of cardboard between the doors so as to allow cooler air in. (Tr. 2, 10, 13) The Claimant became upset, grabbed the cardboard and tossed it. (Tr. 2, 7, 10, 16) Two other co-workers, Patrick McGowan (Tr. 8) and Patricia Gealow (Tr. 10) saw and heard both men get into a verbal altercation regarding whether the door should be shut wherein foul language was passed between them. (Tr. 3, 10-11) The Claimant was the more experienced between the two, and believed it was better for the door to remain shut. (Tr. 13-14) Mr. Hull told Rick “he wasn’t that big...he could kick his –ss...” (Tr. 7) Rick was the bigger of the two men (Tr. 8, 12); neither man got physical. (Tr. 8) Mr. Hull contacted Dave Dana (lead person) to settle the men’s dispute. (Tr. 5, 14)

The Employer terminated Mr. Hull for having an altercation with his co-worker. (Tr. 4)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2009) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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.

The Iowa Supreme Court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

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 NW2d 661 (Iowa 2000).

The Claimant was a long-term employee (26 years) (Tr. 3, 6, 14) having extensive painting experience. Although the parties agree that he received corrective action in the past, the Claimant refuted that it had any relevance to the final act. Additionally, the Employer provided no details, dates as to when and what those disciplinary actions involved over the course of his 26 years of employment.

As for the March 14th incident, it appears to be an isolated act. Based on the Claimant's extensive experience, it was not unreasonable for him to believe and be appropriately upset that cold air from a propped open door was tunneling into the painting area and likely to cause paint drips, which could negatively impact the quality of the work product. Hull's, though confrontational, was equally met with Rick's confrontational demeanor. The fact that the Claimant used foul language is not determinative of misconduct, as it is common knowledge that profanity is no stranger in a factory setting as Mr. Hull so testified. (Tr. 14) The men never came to 'blows' and all that occurred was essentially a shouting match that resulted in the claimant's immediately seeking resolution of their debate from the immediate supervisor, Dave Dana. At worst, the Claimant may have used poor judgment in initially handling the controversy. However, his behavior particularly in that setting did not rise to the legal definition of misconduct.

DECISION:

The administrative law judge's decision dated July 20, 2010 is **REVERSED**. The Claimant was discharged for no disqualifying reason. Accordingly, he is allowed benefits provided he is otherwise eligible.

John A. Peno

Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester