

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFF J RICH
Claimant

APPEAL NO. 10A-UI-06412-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

**Original Claim: 03/28/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

Jeff J. Rich filed a timely appeal from an unemployment insurance decision dated April 20, 2010, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held July 1, 2010, with Mr. Rich participating. Manufacturing Director Clark Vold participated for the employer, Van Diest Supply Co. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jeff J. Rich was employed by Van Diest Supply Co. from March 4, 2003, until he was discharged March 30, 2010. He last worked as a team leader. On March 29, 2010, Mr. Rich overlooked starting a pump at the beginning of a procedure. As a result, approximately ten gallons of herbicide was spilled. In reaching the decision to discharge, the employer also considered spills that occurred in 2004 and two failures to verify tanks, resulting in the wrong product being placed in the tanks, that had occurred in 2009.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

Iowa Code section 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. The evidence in this record does not persuade the administrative law judge that Mr. Rich deliberately caused the spills to occur or deliberately filled product into the wrong tanks. The administrative law judge characterizes these occurrences as carelessness. Five instances of carelessness between February 2004 and March of 2010 does not rise to the level of disqualifying misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated April 20, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw