

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROME A GOULD
Claimant

APPEAL NO: 12A-UI-10484-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PLASTIC INJECTION MOLDERS INC
Employer

**OC: 07/22/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 24, 2012, reference 01, that held the claimant was not discharged for misconduct on July 20, 2012, and benefits are allowed. A telephone hearing was held on September 26, 2012. The claimant participated. Deloris Garth, Secretary, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on September 1, 2005, and last worked for the employer as a full-time shop foreman on July 20, 2012. The employer suspended claimant for two days on July 20 due to a work performance issue and his attitude. Prior to the suspension, claimant had approval to miss work for a doctor's appointment on Wednesday, July 25. Claimant served his suspension on July 23 & 24.

While leaving for his appointment on Wednesday about the noon hour, the employer saw claimant in his vehicle and asked why he hadn't reported to work that day. He replied he was going to his doctor appointment. The employer told claimant he was fired.

The employer re-hired claimant to do some part-time work beginning August 16. Claimant has worked part-time on seven days up to this hearing date while working around his other job at Kinseth Corporation. The department record shows claimant began reporting earned wages the week ending August 4 thru August 19, and he ceased claiming for any benefits after that period.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on July 25, 2012.

The employer suspended claimant on July 20, and discharged him for not returning to work on July 25. Claimant had an excusable reason for not returning to work on July 25 due to the pre-approved doctor appointment. The employer failed to establish the July 25 absence was for a current act of misconduct and job disqualifying misconduct is not established.

The fact the employer re-hired claimant for part-time work beginning August 16 mitigates whether there was job disqualifying misconduct.

DECISION:

The department decision dated August 24, 2012 reference 01 is affirmed. The claimant was not discharged for a current act of misconduct on July 25, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs