

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DALE T HANDEVIDT**

Claimant

**APPEAL NO. 11A-UI-05768-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ARTS WAY MANUFACTURING CO INC**

Employer

**OC: 03/27/11**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated April 22, 2011, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on May 24, 2011. The claimant participated personally. The employer participated by Mr. Rod Coleman, human resource coordinator.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Dale Handevidt was employed by Arts Way Manufacturing Company, Inc. from September 12, 1966, until March 25, 2011, when he was discharged from employment. Mr. Handevidt last worked in the position of a full-time material handler and was paid by the hour. His immediate supervisor was Martin Smith.

Mr. Handevidt was discharged from his employment with this company based upon his refusal to accept mandatory overtime on March 25, 2011. Established company policy requires employees to accept mandatory overtime. The claimant was aware of the rule but had not been required to work overtime, in the past, if he was unwilling to accept it.

Recently, the company began enforcing the mandatory provision of its overtime policy and Mr. Handevidt had been specifically warned that he would be expected to accept mandatory overtime and that his failure to do so might result in his termination from employment. Based upon the claimant's refusal to accept mandatory overtime on March 21, 2011, he was issued a written warning and a two-day suspension from work. When the claimant again refused mandatory overtime on March 25, 2011, he was discharged from employment.

Mr. Handevidt did not accept the mandatory overtime, because he felt 40 hours of work per week was sufficient based upon his age. At the time of discharge, Mr. Handevidt was 70 years old.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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 in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In this matter, the evidence establishes that Mr. Handevidt was aware of the company's mandatory overtime policy and had been made aware by the company that he would no longer be excluded from the mandatory overtime. When Mr. Handevidt refused overtime on or about March 21, 2011, the employer acted reasonably in issuing the claimant's written warning and

suspending him in an effort to emphasize the importance of the rule and Mr. Handevitd's compliant with it. The claimant was discharged when he again refused mandatory overtime on March 25, 2011. The claimant's refusal was based upon his personal decision that he did not want to work overtime.

Although sympathetic to the claimant's situation, the administrative law judge must nevertheless rule that the claimant's refusal to follow a mandatory work rule after being warned showed an intentional disregard of the employer's interests and standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. The claimant's discharge from employment was thus disqualifying.

**DECISION:**

The representative's decision dated April 22, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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