

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

DONALD R SCHULTZ  
517 N 16<sup>TH</sup>  
CHARITON IA 50049

CEMEN TECH INC  
1700 N 14<sup>TH</sup> ST  
INDIANOLA IA 50125-1506

Appeal Number: 04A-UI-01648-SW  
OC 02/09/04 R 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 9, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A hearing was held on April 5, 2004, in Des Moines, Iowa. The parties were properly notified about the hearing. The claimant participated in the hearing. JoAnn Steinbach participated in the hearing on behalf of the employer with witnesses, Doug Reinert, Mark Spangler, Jim Minnis Jr., and Jeff Wallace. Exhibits One through Five were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time as a welder-fabricator from April 20, 2000 to January 9, 2004. His supervisor was Doug Reinert. Mark Spangler was the cell coordinator in the claimant's work area.

The claimant was absent from work due to snow on January 5, 2004. When he returned to work on January 6, 2004, a co-worker, Rick LaValley, gave the claimant a hard time for not reporting to work the previous day. The claimant told LaValley that he and another employee were "suck asses." Later, that day the claimant called LaValley a "hillbilly suck ass" because he had been told that LaValley was telling other employees that the claimant was not going to be around much longer.

On January 8, 2004, the claimant was making a part for Spangler. When the part did not fit, Spangler made some suggestions to solve the problem. The claimant told Spangler that he did not need any advice. Spangler then threw down his square and told the claimant that he was going to report him to Reinert. The claimant went back to his position on the line when Spangler approached the claimant. The claimant asked Spangler what Reinert had said. Spangler told the claimant to get his "ass" back to work. Spangler assumed what the claimant considered was a threatening posture. The claimant asked Spangler where he wanted to meet. When Spangler asked if it was a threat, the claimant asked him where he wanted to meet. Spangler then walked away and reported what had happened to Reinert.

On January 9, 2004, Reinert issued the claimant a documented verbal warning based on the claimant's conduct toward LaValley and Spangler on January 6 and 8, 2004. After receiving the verbal warning, the claimant kept to himself and did not make any negative comments or display any negative behavior. Spangler, however, reported to Reinert that the claimant had looked at him and laughed and had continued to call employees "suck asses," which was not true. The employer discharged the claimant about two hours after he had received the verbal warning.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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, (8) 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(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 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 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant received a verbal warning for his conduct toward LaValley and Spangler on January 6 and 8. He was not discharged for that conduct. The discharge was for the alleged conduct that occurred after the claimant was warned. The evidence, however, does not prove the claimant committed any misconduct after the verbal warning was issued.

DECISION:

The unemployment insurance decision dated February 9, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/b