

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CALVIN D STUEDEMANN
Claimant

ARCHER-DANIELS-MIDLAND CO
Employer

APPEAL NO. 15A-UI-02416-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/25/15
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 11, 2015, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 25, 2015. Claimant participated personally. Employer participated by Bryce Albrechtsen, and Andy Hardigan. Employer's Exhibits One, and Three through Eight were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 13, 2015. Employer discharged claimant on January 20, 2015 because claimant did not follow the company's lockout policy after having received multiple warnings about previous violations of the same lockout policy.

Employer's policy lists specific actions to be followed before doing work on the massive and powerful machinery that exists throughout employer's plant. Employer has developed a specific procedure to be followed on lockout / tagout policy which incorporates OSHA rules when repairing or maintaining equipment.

On January 13, 2015 claimant did not follow the company's policy regarding lockout procedures. Claimant admitted to violating this policy. Claimant had previously received suspensions for past violations of the lockout policy. Claimant had worked for employer for over 20 years and had no injuries that had been incurred by anyone during that time as a direct result of his actions.

Employer has these lockout policies for two reasons; because they are required by OSHA and because the equipment used operates under extremely high voltages and can be extremely dangerous if not treated with great care.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(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.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning lockout violations. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant had repeated violations of company policies involving extremely dangerous conditions. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated February 11, 2015, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs