

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY E SHEW
Claimant

APPEAL NO. 12A-UI-12859-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DONOHOO STEEL TREATING CO
Employer

**OC: 09/23/12
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Timothy Shew, filed an appeal from a decision dated October 18, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 28, 2012. The claimant participated on his own behalf. The employer, Donohoo Steel Treating Company (Donohoo), participated by Owner Bill Donohoo.

ISSUE:

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

FINDINGS OF FACT:

Timothy Shew was employed by Donohoo from May 11, 2010 until September 28, 2012 as a full-time furnace operator. Owner Bill Donohoo had spoken with him informally on several occasions about his lack of productivity. Workers on his own shift and on the next shift had complained about him not doing his share of the work.

On March 1, 2012, he received a written warning. Mr. Donohoo had personally witnessed Mr. Shew sitting in the furnace control room for 30 minutes, doing nothing at all, while other employees were working. On April 3, 2012, he received another warning when the owner personally witnesses him sitting in the break room for more than 30 minutes doing nothing. That disciplinary action included a warning that his job was in jeopardy.

On September 27, 2012, another employee complained to Mr. Donohoo that Mr. Shew had been sitting in the locker room for an extended period of time while there was work to be done. On September 28, 2012, the owner met with Production Manager Vince Edwards and Plant Manager Jim Clasen to discuss Mr. Shew's future with the company. At that meeting Mr. Edwards and Mr. Clasen notified Mr. Donohoo they had recently discovered the claimant had, on April 27 and August 17, 2012, "signed off" on quality control documents certifying the parts were within specifications, when in fact a second inspection by another person on the next

shift, showed them out of specification so far that they had to be melted down and done over again.

The employer called Mr. Shew before his afternoon shift on September 28, 2012, and told him he was discharged. A letter with more specifics as to the reasons was sent.

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 claimant had been advised his job was in jeopardy as a result of his failure to do his work as assigned. Although Mr. Shew denied all of the allegations he did not provide any explanation as to why the employer, his managers and other employees would all suddenly conspire to fabricate such allegations. It is noted the claimant did not deny the allegations of loitering on the job when he received the warnings in March and April 2012.

Mr. Shew also denied he had inaccurately certified parts as being within specification because some parts were good and some were bad, and hardness was another issue. Mr. Donohoo stated emphatically that hardness was hardness after the tempering and the metal was either within or not within specifications. The claimant did not deny the parts had to be recast and re-tempered.

The employer as met its burden of proof by a preponderance of the evidence and firsthand testimony regarding the on-going problem of the claimant loitering on the job. Failing to perform work as required, and not working while on the clock is conduct not in the best interests of the employer. It is a violation of the duties and responsibilities the employer has the right to expect of an employee and the claimant is disqualified.

DECISION:

The representative's decision of October 18, 2012, reference 01, is affirmed. Timothy Shew is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css