

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYAN D KNUTSEN
Claimant

APPEAL NO. 13A-UI-10103-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLLIS INC
Employer

OC: 11/18/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 29, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on October 10, 2013 and completed on October 11, 2013. Claimant participated. Employer participated through Bobby Armstrong, Production Supervisor and (representative) Michelle Hubbner, Human Resources Coordinator.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a resistance welder operator beginning on April 30, 2012, through August 8, 2013, when he was discharged. At the end of every work shift all employees were required to clean up their work cell areas. The claimant and all the employees had been specifically been told only one week prior to the claimant's discharge to take the last ten minutes of their shift to clean up work areas. Employees were on paid time to clean up their work areas. On the claimant's last day of work, Ms. Armstrong and Ms. Hubbner watched surveillance video as the claimant went outside to smoke at 10 minutes before the end of the shift when the buzzer went off. He did not clean up his work area as he was required to do. He had been given a three-day suspension on June 27, 2013, when he was dishonest with the employer about needing time off work for an appointment. The three-day suspension put him on notice that his job was in jeopardy. He had been written up on April 3, 2013 for making derogatory comments to a coworker that escalated into an event where production had to be shut down. On October 3, 2012 he was written up for failing to perform his job duties when one-hundred parts he was working had to be reworked due to his failure to follow instructions. The claimant had been given a copy of the employer's handbook and policy manual. The employer followed their own policies and did not treat the claimant any differently than any other employee. The claimant had been given verbal counseling as well as the written set out above.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant made the mess in his work area and instead of using the ten minutes of paid time before the end of his shift to clean it up, went outside to smoke cigarettes. The administrative law judge does not believe that the claimant was set up by another employee. He was working on the machine that was left dirty. Claimant's failure to accurately perform his job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The August 29, 2013, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs