

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES SLATTON
Claimant

APPEAL NO: 11A-UI-03892-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRINITY STRUCTURAL TOWERS INC
Employer

OC: 01-02-11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 22, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 19, 2011. The claimant participated in the hearing. Deb Emmerts, Human Resources Generalist; Scott Klinkefus, Acting Plant Manager; and Kevin Louge, Safety Manager/Human Resources Generalist, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time laborer for Trinity Structural Towers from July 7, 2010 to December 29, 2010. His job involved building and painting large wind turbines. The claimant was discharged for an unsafe and reckless act which could have resulted in severe bodily injury or death. On December 29, 2010, the claimant turned on the air motor that drives the trunnion on which the base section of the wind tower was sitting. He failed to notify his co-workers as to what he was doing and had the employer not turned off the motor, the crane holding the base section could have come down and the turning rings on the base section would have snapped off, rolled over and crushed someone. All the employees working on the base section at the time could have been seriously injured. The wind turbines come in three sections and the base section of the wind tower is 70 feet in length, 14.5 feet in diameter, and weighs 80,000 pounds. A 5,000 pound turning ring is bolted onto each end of the base section with an air impact wrench so it can be rotated 360 degrees to be painted. The ring is then turned by a trunnion. Once the tower has been painted, a hydraulic jack picks up each end so that the turning rings can be removed. The section is then placed back onto the trunnion. All employees are trained repeatedly not to move anything without telling the other workers first as serious injuries could result. The safety procedures are also posted. The employer terminated the claimant's employment for violating safety procedures.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged December 29, 2010, for committing an egregious safety violation which could have resulted in serious bodily injury or death. He testified that the maintenance worker told him to turn on the motor but even if that were the case, there is no excuse for the claimant failing to tell his co-workers what he was doing and placing their safety in jeopardy. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The March 22, 2011, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css