

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY J CLINE

Claimant

MANPOWER INTERNATIONAL INC

Employer

APPEAL NO: 11A-UI-03539-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/21/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 18, 2011, reference 02, that held he was discharged for misconduct on February 2, 2011, and benefits are denied. A hearing was held in Des Moines, Iowa on April 27, 2011. The claimant, and his Attorney, Justin Gross, participated. Dave Dickey, Branch Manager, participated for the employer. Claimant Exhibit A was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began working on assignment at Victor Manufacturing as a full-time machine operator on July 23, 2010, and last worked on February 1, 2011. While driving to work on February 2, an employer representative called the claimant to tell him not to report to work, because Victor was releasing him from his assignment due to an incident involving another employee.

Claimant had not received any formal warning for inappropriate behavior, but he had been counseled by an employer representative about his work during a job performance interview. A Victor supervisor observed claimant arguing with another employee in the breakdown on February 1. Earlier that day, claimant had requested the other employee to move to the side so both could wash their hands at a sink, and they exchanged some foul words. When the supervisor requested the claimant and other employee to stop arguing in the break-room, they did so. The claimant was allowed to return to work that day.

Manager Dickey gave claimant an opportunity to explain what happened to him. Dickey was concerned that claimant failed to recognize he had acted inappropriately, and that this behavior might be repeated if re-assigned to another employer client. Dickey discharged claimant from

employment for his inappropriate behavior at Victor, and his failure to recognize it, as it might affect any future employer client.

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.

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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on February 2, 2011.

The claimant admits an incident involving another employee at a wash sink and later in the breakdown. Victor representatives released claimant from his assignment based on his break-room argument with another employee, as no supervisor was aware of what had occurred earlier at the wash sink. While claimant admits the use of a foul word when the other employee resisted his request to move around the sink, the incident was not so serious as to draw any attention to it.

While the claimant's argument with the other employee in the break-room was serious enough to request Victor representatives to release him from the assignment, it is not so serious as to be considered job disqualifying misconduct. The break-room is not a place where work could be disrupted and there is no evidence that it otherwise caused any conflict with other employees. The claimant and other employee complied with the supervisor request to stop, which they did, and claimant was allowed to return to work that day.

The employer discharged claimant not just because he was released from his assignment, but because it concluded he failed to recognize the consequence of his behavior to the point it did not want to risk placing him on any future assignment. While the employer reasoning is meritorious, the claimant's response to his assignment release is not misconduct.

DECISION:

The department decision dated March 18, 2011, reference 02, is reversed. The claimant was not discharged for misconduct on February 2, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs