

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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APC COMPANY INC
C/o LINDA WILSON
2425 SE OAK TREE CT
ANKENY IA 50021-7102

Appeal Number: 06A-UI-04893-DWT
OC: 04/09/06 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

APC Company, Inc. (employer) appealed a representative's May 4, 2006 decision (reference 01) that concluded Turner L. Carter (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 23, 2006. The claimant participated in the hearing with his witness, Travis Olson. Al Callahan, the third shift foreman, Don Kowalski, the superintendent, and Linda Wilson, the benefits manager, appeared on the employer's behalf. During the hearing, Employer's Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 15, 2004. Callahan became the claimant's supervisor on January 1, 2006. The employer's policy informs employees that if they receive three written warnings within a year, they will be discharged.

On February 10, 2006, the claimant received a written warning because he notified the employer he was unable to report to work as scheduled. When the claimant did not bring a doctor's statement verifying he was ill, the employer considered the claimant's absence unexcused. The unexcused absence resulted in a written warning.

On March 13, 2006, the claimant received his second written warning. The claimant notified the employer at 11:54 p.m. he was having car problems but would be at work late. The claimant did not report to work at all this shift. The employer gave the claimant a three-day suspension for this incident. The employer also warned the claimant that the next written warning would result in his termination. The claimant was suspended on March 15, 16 and 17. The claimant did not call the employer 30 minutes prior to his shift because his car broke down on the way to work. By the time the claimant had his vehicle towed, it was past 2:00 a.m. If the claimant had reported to work after 2:00 a.m., the employer would have counted him absent for the entire shift.

On March 31, 2006, Callahan observed that the claimant was not wearing rubber gloves when he removed equipment from a chemical wash. Although the claimant used another employee's gloves when he removed equipment from a chemical wash, he did not have the gloves on when Callahan saw him. Instead, the claimant was using a paper towel while cleaning with alcohol. The claimant told Callahan his company-issued gloves were in his locker. Callahan gave the claimant his third written warning for violating the employer's safety rules because he did not wear his rubber gloves as the employer requires employees to do when they are working with caustic chemicals. The claimant and another employee understood they could take off the gloves after they had rinsed off the caustic chemical. The employer discharged the claimant on March 31, 2006, for receiving three written warnings in less than a year.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

The employer established compelling business reasons for discharging the claimant. Pursuant to the employer's policy, the employer discharged the claimant because he had three written warnings in less than a year.

The warnings the claimant received on February 10 and March 13 were for attendance-related issues. On March 31, the employer noticed the claimant was not following the employer's safety procedures by wearing gloves. The claimant indicated he had worn gloves when he removed equipment from the chemical bath and Callahan was not present when he did this. The facts show the claimant readily told the employer his gloves were in his locker, and he used another pair of gloves before Callahan saw the claimant. The claimant's gloves were in his locker. The claimant also presented information that he had used a paper towel before to clean equipment and no one reprimanded him for doing this. Since this was the first time the facts indicate the claimant violated a safety procedure, this isolated incident does not rise to the level of work-connected misconduct. Therefore, as of April 9, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 4, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of April 9, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kkf