

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PETER M MILLER
Claimant

APPEAL NO. 15A-UI-01856-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OLYMPIC STEEL IOWA INC
Employer

OC: 01/25/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Peter Miller (claimant) appealed a representative's February 6, 2015 (reference 01) decision that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Olympic Steel Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 13, 2015. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge spoke to a woman who answered the telephone. She indicated the employer was not available. A message was left for the employer. The claimant offered and Exhibits A, B, and C were received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 20, 2011 as a full-time press brake operator. The claimant signed for receipt of the employer's handbook. The claimant was trained and certified in operating a forklift on April 14, 2011. In August 2014, the employer issued the claimant a suspension for a safety violation.

Even though the claimant had never been trained or certified on a crane, the employer had the claimant run a slower moving crane a couple dozen times during his employment. On January 22, 2015, the claimant's foreman told the claimant the company was shorthanded since the crane operator of a fast moving crane was away from work. The foreman needed the claimant to run the fast moving crane that day. The claimant told the foreman he had no training to operate a crane but the foreman said the company needed him. The claimant felt he could not say no to the foreman.

While the claimant was working he lifting up sheets that were improperly stacked by the previous crane operator. Smaller sheets of steel were stacked on larger sheets. This caused the sheets to slide and fall. There was no property damage nor injury. On January 23, 2015, the employer terminated the claimant. After the termination, the employer went through the steel sheets and corrected the stacking problem.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes he was not discharged for 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer terminated the

claimant because a prior crane operator improperly stacked sheets of steel and then asked an untrained crane operator to move the improperly stacked sheets. The claimant performed the work to the best of his ability. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's February 6, 2015 (reference 01) decision is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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