

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CURTIS W CAMPBELL

Claimant

APPEAL NO. 09A-UI-01875-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTIVE THERMAL CONCEPTS INC

Employer

**OC: 01/11/09 R: 04
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 28, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 26, 2009. Claimant participated. Employer participated through Matt Yamilkoski. Employer's Exhibit 1 was received.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as an asbestos abatement worker and was employed from July 28, 2008 until January 8, 2009, when he was discharged. He used his cell phone and stepped out of the way of two safety directors and the plant manager into a precarious location and did not respond to them when spoken to. Earlier that morning employer had held and claimant attended a safety meeting prohibiting the use of cell phones for personal use at work and reemphasized safety procedures. He had also been made aware of the customer's cell phone use rules that are much stricter than the employer's work rules.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Employer is charged under both federal and state law with providing its employees a safe working environment; furthermore, it is in employer's best financial interest to avoid employee injuries. Claimant's inattention, knowing violation of the cell phone use policy and related safety rules is evidence of willful misconduct. Benefits are denied.

DECISION:

The January 28, 2009, 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw