

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LARRY B RICE**

Claimant

**APPEAL NO. 11A-UI-05438-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AG PROCESSING INC A COOPERATIVE**

Employer

**OC: 03/06/11**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated April 14, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on May 17, 2011. Claimant participated personally. The employer participated by Mr. Ernie Kiley.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Larry Rice was employed by Ag Processing, Inc. A Cooperative from July 21, 2008 until March 8, 2011 when he was discharged from employment. Mr. Rice held the position of full-time maintenance worker and was paid by the hour.

The claimant was discharged following an incident that took place on or about March 3, 2011. On that date the claimant was working as a safety "attendant" with another employee performing maintenance work in a "pit" area of the employer's facility. Company policy, work rules and the permit issued for the work all require that the employee who is performing work in the "pit" area be secured with a harness and lifeline attached. As the safety attendant, Mr. Rice's job function was to observe the other employee to insure the other employee's safety and to make sure that all safety requirements were being met.

Because Mr. Rice and the other employee were "in a hurry" and the day was ending, the other employee descended into the pit without the safety harness as required. When Mr. Rice was in the process of lowering the safety harness and line to the other employee, he was observed by a supervisor who recognized a safety violation had occurred and reported the matter to management. The following day the claimant was suspended without pay pending an investigation and subsequently was discharged.

The employer elected to discharge Mr. Rice because he had been previously warned for a serious safety violation and was put on notice at the time of the previous violation that further safety violations could result in disciplinary action up to and including termination from employment. Because the other employee had not been previously warned, he was not discharged but instead suspended and issued a disciplinary action.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

In this matter the evidence establishes that Mr. Rice was discharged based upon a serious violation of a known and required safety procedure. As the safety attendant on duty on the day in question Mr. Rice's job was to insure that safety requirements were being met and to observe the other employee who was working in the pit area to make sure that the other employee was not only following the rules but remained safe while performing his duties. The claimant failed to follow required procedures that he was aware of because the claimant and the other worker were "in a hurry" and the day was ending. Because the claimant had been previously warned

for a safety violation, a decision was made to terminate Mr. Rice from his employment with the company.

The administrative law judge finds that the claimant was aware of the safety requirement but did not follow it and was aware of the rule through training, the permit requirement and work rules and knew or should have known that failing to follow required safety rules could result in his termination from employment. Benefits are withheld.

**DECISION:**

The representative's decision dated April 14, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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