

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYLE C CHAPMAN
Claimant

APPEAL NO. 13A-UI-00583-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-LERT
Employer

OC: 03/04/12
Claimant: Appellant (1)

Section 96.5-2-a - Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the representative's decision dated January 10, 2013, reference 03, which held that the claimant was not eligible for unemployment insurance benefits. After due notice was issued, a hearing was held in Cedar Rapids, Iowa, on March 11, 2013. The claimant participated personally. The employer participated by Bryan Kraus, second shift maintenance supervisor, and Robert Tompkins, superintendent. The record consists of the testimony of Bryan Kraus; the testimony of Robert Tompkins; and the testimony of Lyle Chapman.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer is in the construction business. The claimant was hired on May 1, 2012, as a full-time maintenance worker. The claimant was terminated on December 12, 2012, for insubordination.

The incident that led to the claimant's termination occurred on December 11, 2012. The claimant worked for the employer at the ADM plant in Cedar Rapids, Iowa. The claimant was told to do a job that was done daily and done many times by the claimant personally. The job was to lubricate the bearings on conveyer belts. Two persons were assigned to the job. The claimant refused to do the job. The other employee did the job in approximately thirty minutes. Had the claimant assisted the other employee, the job would have been done in twenty minutes.

The employer had been alerted by ADM at 10:45 p.m. that the job needed to be done. The claimant was scheduled to go home at 11:30 p.m. The claimant was told to take his break and then do the job. One part of the job was to fill out a form known as the JHA or job hazard assessment. The claimant had prepared this form many times. The job was not a hazardous

job. The claimant did not think he could fill out the form and do the job, even though there was another employee present. He had a radio but he did not call Bryan Kraus, his supervisor, to tell him about his time concerns or to sign the form for the job. The claimant simply left work.

The next day the claimant was called into Mr. Kraus' office. The claimant became argumentative with Mr. Kraus. Mr. Kraus decided to terminate the claimant.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Failure to perform a specific task does not constitute misconduct if the failure is in good faith or for good cause. See Woods v. IDJS, 327 N.W.2d 768 (Iowa App. 1982). The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The claimant clearly failed to follow an instruction from his supervisor to grease the bearings on the conveyer belt before he left for the night. The claimant never told his supervisor that he could not finish the job by quitting time. He simply decided that it could be done the next day. The claimant's insistence

that he could not safely do the job in the time allotted does not stand up under close scrutiny. Another employee, who was supposed to work with the claimant, finished the job in thirty minutes. Had the claimant assisted, it would have been twenty minutes. The claimant had filled out the necessary form in the past. He could have radioed his supervisor and asked for his signature on the form or at least informed him that he could not finish the job. He did none of these things. The claimant's conduct amounts to insubordination, which is misconduct. Benefits are denied.

DECISION:

The unemployment insurance decision dated January 10, 2013, reference 03, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefits amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs