

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSE M MCINTYRE

Claimant

GKN ARMSTRONG WHEELS INC

Employer

APPEAL NO: 12A-UI-00866-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/27/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 10, 2012, reference 03, that held he was discharged for misconduct on November 17, 2011, and benefits are denied. A telephone hearing was held on February 20, 2012. The claimant participated. Brenda, Evans, HR Supervisor, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time welder on July 25, 2011, and last worked for the employer on November 17. He had worked there for six months beginning with a temporary agency. The claimant received an employee handbook that contained the policies of the employer. The claimant knew he could be terminated for serious horseplay.

On the night of November 17, a co-worker wrapped his hand around a chain that is part of a hoist operated by claimant. Claimant saw what his co-worker had done, and pushed the button to engage the hoist lifting the co-worker off the ground. Claimant did not immediately drop the co-worker when he requested to do so. The co-worker suffered a minor injury.

The HR department investigated the incident. Claimant contended the co-worker “egged him on” to do it. In the hearing, claimant said he had his back to him and could not hear him. Several other workers who observed the incident told HR that the co-worker asked claimant to stop and lower the hoist twice before he did so. The employer concluded claimant had committed a serious act of horseplay that is a terminable offense according to policy and discharged him.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on November 17, 2011, for a serious violation of company policy.

The claimant admits he committed an act of horseplay, but denies it was serious enough to merit discharge. He also contends the co-worker should have been disciplined. The claimant knew what he was doing that is a violation of employer policy, and even a minor act is enough to constitute the seriousness of the offense that is job disqualifying misconduct.

DECISION:

The department decision dated January 10, 2012, reference 03, is affirmed. The claimant was discharged for misconduct on November 17, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs