

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN G BRACKIN
Claimant

APPEAL NO. 10A-EUCU-00905-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

POWER BRACE LLC
Employer

OC: 01/10/10
Claimant: Respondent (2-R)

Section 96.5-2-a – Misconduct
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated September 16, 2010, reference 04, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 9, 2010. The claimant participated. The employer participated by Bill Heady, co-owner; Tim Heady, co-owner; and Brian Holdeman, shop foreman. The record consists of the testimony of Bill Heady; the testimony of Tim Heady; the testimony of Brian Holdeman; and the testimony of John Brackin.

ISSUES:

Whether the claimant was discharged for misconduct; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures piercing parts, which are used for straightening basements. The claimant operated a press used to stamp parts. He was a full-time employee. His last day of work was August 28, 2010. He was terminated on August 18, 2010, for failing to wear safety glasses.

The employer has a safety rule that requires all employees to wear safety glasses when operating equipment. The claimant operated a press. The reason safety glasses were required was that if the press emitted a part and that part struck an employee's eye, the eye would literally explode. The claimant knew this rule and had been warned previously that he must not operate a press without wearing safety glasses. The employer kept safety glasses in the shop foreman's desk and in a bag in the storeroom.

On August 18, 2010, the claimant came to work and started up the press. He was not wearing safety glasses. Bill Heady came by and asked the claimant why he was not wearing the glasses. The claimant made a crude remark in response and he was sent home. When he came back the next day, Mr. Heady told the claimant he had been terminated.

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. An employer is required to provide a safe workplace for its employees and therefore can reasonably expect that an employee will follow all safety rules instituted by the employer. The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant knew that the employer had in place a rule that required him to wear safety glasses at all times when operating a press. The press was a big piece of equipment, and should a part be emitted from the machine and strike an eye, serious injury would result. The claimant had been warned in the past about wearing safety glasses. On August 18, 2010, the claimant could not find his safety glasses. Instead of looking for a pair or asking his employer for a pair, he started up the press and had actually run a few pieces when the employer asked him why he was not wearing safety glasses. The claimant made a crude remark in response and was sent home.

The administrative law judge concludes that the claimant's failure to follow his employer's safety rules is misconduct. The claimant knew about the rule and deliberately chose to violate it because he could not find his glasses that day. His excuse that there was a big order to run does not negate his failure to follow a known rule, particularly in view of past warnings. Misconduct is established. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the claims section for determination.

DECISION:

The representative's decision dated September 16, 2010, reference 04, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The overpayment issue is remanded to the claims section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vlS/kjw