

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GORDON J LIGHTFOOT
Claimant

APPEAL NO. 11A-UI-12773-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRO INC
Employer

**OC: 09/04/11
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer appealed a department decision dated September 26, 2011, reference 01, that held the claimant was not discharged for misconduct on February 5, 2010, and which allowed benefits. A telephone hearing was held on October 19, 2011. The claimant participated. Tracy Lennon, HR assistant, and Vince Owen, business process pro, participated for the employer. Employer Exhibit 1 was received as evidence.

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 on February 22, 2010, and last worked for the employer as a full-time product inspector/finisher employee on September 2, 2011. He received the employer's policies in an employee handbook.

Claimant was issued job performance warnings on January 28, 2011; May 2, 2011; and June 27, 2011. He offered no comments in response to the discipline. The June 27 warning put claimant on notice his job was in jeopardy. The primary issue was the claimant's failure to remove debris from hydro tanks to the standard (50 mg) established by the employer.

The employer provided written instruction training to claimant and other employees who performed debris removal on August 17. The employer had perceived that employees were failing to remove debris to the required standard. Employees can make a visual inspection of the tank through a two-inch hole and shake a tank in order to determine whether debris has been removed. The importance of debris removal is that it can foul employer machine operation in the production process.

On September 1, the employer tested claimant to determine whether he was doing debris removal to the required standard. The employer found an excessive debris level and he was

discharged on September 2. There were other production employees who were disciplined for the same debris removal conduct but not discharged, as claimant had a more lengthy disciplinary history.

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on September 2, 2011.

It is apparent that claimant and other employees who performed debris removal had difficulty meeting the employer's standard, and that a visual inspection or shaking the tanks was not beneficial. The training instruction did not improve performance, as it failed to cure the underlying problem of accurately measuring debris level in the tanks. Claimant's job performance failure is not based on misconduct. He did not intentionally disregard the employer standard but had the inability to meet it.

DECISION:

The department decision dated September 26, 2011, reference 01, is affirmed. The claimant was not discharged for misconduct on September 2, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw