

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL STARR

Claimant

APPEAL NO: 12A-UI-08008-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

G & K SERVICES COMPANY

Employer

OC: 05-27-12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 27, 2012, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 26, 2012. The claimant participated in the hearing. Sarah Murdoch, Senior Human Resources Representative and Mike Ryan, Maintenance Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time wastewater treatment technician for G & K Services from June 14, 2011 to May 25, 2012. The employer also runs a commercial laundry service. On May 23, 2012, the claimant had work orders to perform preventative maintenance work on several machines. He indicated on the work order that he serviced and cleaned the machines and spent 30 minutes working on each. Employees receive the work orders and are expected to write what they did and how long it took after doing the work. The claimant completed the work orders prior to doing the work and was called away before he could finish two of the machines. It was also close to the end of the claimant's shift and rather than using the allowed overtime the claimant left at his scheduled time off. Consequently, he signed off on work orders stating he did the tasks required by the work orders and that he spent 30 minutes on each machine without actually doing the work or knowing how long it took. On May 24, 2012, Maintenance Manager Mike Ryan was shown pictures of the machines by the safety department showing the work orders were not completed. One of the photographs showed several inches of debris, dirt and lint under one of the irons the claimant stated he worked on and another showed a garment left under an iron. After reviewing the pictures Mr. Ryan referred back to the work orders and noted the claimant stated he completed the work on both machines and did so by spending 30 minutes on each machine. Fires are the employer's most severe safety threat, issue and concern due to the lint generated by the irons and dryers and failing to clean the machines as required greatly increases the risk of fire. On October 3, 2011,

Mr. Ryan instructed the claimant that all cooling fans were required to be turned off when he left at 1:30 a.m. On October 10, 2011, the employer discovered some of the cooling fans for the facility were left on overnight creating a fire hazard. Additionally, one of the doors to the facility was not locked. It was the claimant's responsibility to lock all the doors every night before he went home. An individual entered the unlocked door and set off the alarm. The employer provided the claimant with a checklist of duties and the claimant had also checked off items that were not actually completed that night. As a result of his actions the employer issued a final written warning to the claimant because any fire safety violation, such as leaving the cooling fans on overnight, results in a final written warning. On May 4, 2012, the claimant checked off that he had completed the monthly inspection of each of the employer's 46 fire extinguishers but the employer found one that was checked off that had not been inspected. The claimant then backdated an inspection sticker on the fire extinguisher. Mr. Ryan issued the claimant a verbal warning to spare his job because another safety violation would have resulted in termination of the claimant's employment. After reviewing the claimant's actions May 23, 2012, and his previous warnings, the employer terminated the claimant's employment for falsifying work orders resulting in safety violations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 nature of the employer's business leaves it vulnerable to fires and consequently the employer is understandably strict about safety issues, especially those that could result in fire. The claimant received a final written warning for a fire safety violation October 10, 2011, for failing to turn the cooling fans off when he left work, nine days after specifically being told he needed to turn the fans off before leaving each night. The final incident involved the claimant falsifying two work orders issued May 23, 2012. He completed the forms prior to performing the work, which is a violation of the employer's policy requiring the forms to be filled out upon completion of the work, and indicated he cleaned and serviced two irons when actually he did not do so. The two industrial/commercial irons were covered with debris, dirt and lint and one still had a garment under it. Both failed tasks resulted in fire hazards. While the claimant stated he was called away before he could complete his duties, he should have returned or at least changed what he wrote on the work orders. Instead, he left work, as it was close to the end of his shift, rather than ask for overtime, which the employer readily grants, especially when it involves a safety issue. The employer provides employees with a check list and the claimant was capable of performing the job to the employer's expectations but did not do so on three documented occasions during the last seven months of his employment. Because the claimant falsified the work orders resulting in a serious fire safety violation, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The June 27, 2012, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs