

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW E ANDRESEN
Claimant

APPEAL NO: 09A-UI-14608-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ECONOMY COATING SYSTEMS INC
Employer

OC: 09/06/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Andrew E. Andresen (claimant) appealed a representative's September 24, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Economy Coating Systems, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 27, 2009. The claimant participated in the hearing. Robin Jenko-Marcusi appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 13, 2006. He worked as a full-time railcar repair person.

The employer requires all employees to wear a hardhat when they are on the production floor. On June 18, 2009, the employer implemented a new safety policy – zero tolerance for safety violations. The employer informed the claimant about the new policy.

On July 6, the employer gave the claimant a written safety violation warning for not having a confined space permit that OSHA requires. Even though the claimant did not know where the permit was when the employer gave him the written warning, he gave the employer a copy of the permit three days later. The claimant had not completed the paperwork, but the person he was working with had completed the permit. The employer did not suspend or discharge the claimant since he produced a copy of the completed permit. The July 6 warning informed the claimant that that next incident could result in a three-day suspension or his discharge. After July 6 the employer gave the claimant a three-day suspension for attendance issues.

The claimant understood he was required to wear a hardhat and safety glasses when he worked on the production floor. On June 14, he received a written warning for not wearing his safety glasses. On September 2, Jenko-Marcusi noticed the claimant was on the production floor and was not wearing his hardhat or safety glasses. She reported this to the safety director.

When the safety director went to the talk to the claimant, he was working underneath a railcar. He did not have his hardhat on because there was not much room under a railcar to work and wear a hardhat. The claimant knew other employees who did not wear hardhats when working underneath a railcar. Also, the claimant was not wearing his safety glasses because they were shaded and he could not see clearly while he was painting. The claimant acknowledged he should have worn safety glasses and could have obtained glasses that were not shaded.

On September 8, 2009, the employer discharged the claimant for failing to wear safety equipment on September 2, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew and understood the employer required him to wear a hardhat and safety glasses on the production floor. The claimant also knew the employer implemented a stricter safety violation policy – a zero-tolerance policy for safety violations. When the claimant received the July 6 warning, he understood his job was in jeopardy. On September 2, the claimant did not wear his shaded safety glasses because he could not see clearly to paint. However, the claimant knew the employer required him to wear the safety glasses and he could have obtained some safety glasses that were not shaded. On September 2, the claimant made a conscious decision not to wear safety glasses even though he had been previously warned about this violation of the employer's safety policy. On September 2, the claimant's failure to follow the employer's safety policy constitutes work-connected misconduct. Therefore, as of September 6, 2009, the claimant is not qualified to receive benefits.

DECISION:

The representative's September 24, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 6, 2009. This

disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css