

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN S STIGLEMAN

Claimant

APPEAL NO. 07A-UI-07962-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASTORIA INDUSTRIES OF IOWA INC

Employer

**OC: 12/24/06 R: 03
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated August 17, 2007, reference 10, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 5, 2007. Although notified the claimant did not participate. The employer participated by Rich Schumacher, Manager and Tiffany Wolf, Human Resource Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all the evidence in the record, finds: The claimant worked for this employer from July 11, 2007 until July 16, 2007, when he was discharged for refusal to perform assigned work duties. At the claimant's request he had been moved from the company's fiberglass department to its grinding department. Subsequently, the claimant requested a different assignment due to a physical reaction from the environment in the grinding department. The employer complied by offering Mr. Stigleman other work. Mr. Stigleman refused threatening physical harm to his employer.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the employer has sustained its burden of proof in establishing that the claimant was discharged for misconduct in connection with his work. The evidence in the record establishes that the employer had attempted to accommodate Mr. Stigleman by assigning him to a different job at the claimant's request and that the employer was willing to reassign Mr. Stigleman when Mr. Stigleman indicated a physical problem. Although the employer reassigned Mr. Stigleman, he refused to perform the duties without citing any reason for his refusal. Upon being discharged the claimant became belligerent and threatened physical harm to his employer.

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.

For the reasons stated herein the administrative law judge finds that the employer has established intentional disqualifying misconduct on the part of the claimant. Benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits paid to the claimant which he was not entitled must be recovered in accordance with the provisions of Iowa law. The records, however, do not show that Mr. Stigleman has received unemployment insurance benefits to which he was not entitled.

DECISION:

The representative's decision dated August 17, 2007, reference 10, is reversed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the

claimant has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, providing that he satisfies all other conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css