

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW C KROTZ
Claimant

APPEAL NO. 12A-UI-01275-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-LERT
Employer

OC: 12/25/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated January 24, 2012, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on April 2, 2012. Claimant participated. The employer participated by Ms. Brenda Wooten, Employment Service Assistant, and Mr. Bryan Kraus, Second Shift Mechanical Maintenance Supervisor.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Matthew Krotz was employed by the captioned company from April 12, 2011 until September 19, 2011 when he was discharged from employment. Mr. Krotz worked as a full-time electrician and was paid by the hour. His immediate supervisor was Bryan Kraus.

The claimant was discharged after he left the ADM facility where the company was performing services without properly notifying his supervisor and obtaining permission to temporarily leave. The claimant also failed to clock out on the company's time keeping equipment although Mr. Krotz did swipe out through a gate control device.

When the claimant had reported for work that day, the mechanical maintenance supervisor noted that Mr. Krotz was wearing tennis shoes instead of the steel toed work boots that were required at the facility. When Mr. Kraus went to locate Mr. Krotz about the improper footwear, Mr. Krotz could not be located. The superintendent then determined that Mr. Krotz had exited the facility without obtaining his permission or clocking out on the company's time keeping device. The claimant had swiped out through an entry/exit gate. It appears that swiping was necessary to activate the gate to allow an employee to exit. The maintenance supervisor waited for Mr. Krotz to return. When the claimant returned between one-half hour and one hour after

leaving, he was confronted by his supervisor and then discharged because he had failed to obtain permission to leave, because he had failed to clock out and because he had reported to work without the proper required safety gear.

It is the claimant's position that he had informed other workers that he had to temporarily leave to get his work boots from his truck. It is the claimant's belief that he had properly informed the company by telling other workers and a person who he considered to be a "lead." It is the claimant's further position that it is not uncommon for workers to temporarily leave the work area to obtain tools, etc.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code § 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this case the testimony is disputed. The administrative law judge, having considered the matter, concludes that Mr. Krotz left the job site on September 19, 2011 without properly notifying his supervisor, Mr. Kraus of the need to leave and the claimant did not obtain permission before leaving. The evidence also establishes that the claimant did not punch out but only used a swipeout to enable himself to exit through a gate. The evidence establishes that Mr. Krotz was gone a substantial period of time between one-half hour and one hour.

The administrative law judge concludes that Mr. Krotz knew or should have known that leaving for a substantial period of time without obtaining the specific permission of his immediate supervisor and without properly clocking out would be a violation of the company's policies and jeopardize his employment. Mr. Krotz also was aware that he was required to wear protective foot gear when reporting at that facility but the claimant did not do so. The administrative law judge finds that the employer has sustained its burden of proof in showing that the claimant's conduct showed a disregard for the employer's interests and standards of behavior and thus was disqualifying under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated January 24, 2012, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs