

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HENRY F BOHE
Claimant

VALERO SERVICES INC
Employer

APPEAL 14A-UI-13392-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/30/14
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 17, 2014 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 22, 2015. Claimant participated and was represented by Willis Hamilton, Attorney at Law. Employer participated through (representative) Bob Abbott, Director of Human Resources, and Sara Edwards, Human Resources Manager. Employer's Exhibit One, pages 1 through 37, was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a maintenance technician beginning on February 18, 2008 through November 7, 2014 when he was discharged.

The employer has a progressive discipline policy which provides that after being given a final written warning the next rule infraction will lead to discharge. The claimant was given a final written warning for a safety violation in July 2012. In July 2014 he was to be disciplined for poor performance. The employer decided that since so much time had passed since his final written warning the claimant would not be discharged for the incident but instead would be given another final written warning.

The claimant had been assigned to act as safety lead on a job beginning on October 30, 2014. The claimant had extensive prior training in safety lead work and had acted as a safety lead previously. No other employee or manager gave the claimant permission to leave the position as safety lead on his assignment on the dryer line. While another operations employee had put in a request to have additional work done, that employee did not ask or give the claimant permission to leave his safety lead position. The claimant began talking to some contractors who were working on another job and the claimant agreed to act as confined space attendant for their work. The claimant did not ask or notify anyone, either his coworkers or any manager

or supervisor, before he left the safety lead position to work as the confined space attendant. The claimant was obligated to at least let his coworkers know he was not there to act as safety lead and he was obligated to sign off on the work permit sheet that had him listed as safety lead. The claimant was obligated to at least tell his coworkers, who continued to work on the dryer D job that he was dropping off as safety lead. The claimant's actions are a violation of the employer's safety policies and procedures. An employee is not allowed to disregard safety policies even if no one gets hurt.

The claimant completed a written statement that provided he had not either told anyone or gotten permission from his supervisor or signed out on the work permit before leaving his assigned work assignment as safety lead.

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 § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The claimant had extensive training and experience as a safety lead. His actions, that is not signing off on the safety work permit and not letting anyone know he was leaving his position as safety lead, was a violation of the employer's safety policies and procedures. The administrative law judge is not persuaded that the claimant did not know his obligations under the employer's policies. While no one was injured by the claimant's failure to follow proper procedures, an employer need not wait for injury before disciplining employees for failure to follow polies. The claimant's safety violation was a serious violation of the employer's policies and in light of the claimant's prior disciplinary history is sufficient job connected misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The December 17, 2014 (reference 01) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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