

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY C BEAN
Claimant

APPEAL NO. 09A-UI-17947-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEATON CORPORATION
Employer

OC: 10/25/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Terry Bean filed an appeal from a representative's decision dated November 18, 2009, reference 01, which denied benefits based on his separation from Seaton Corporation. After due notice was issued, a hearing was held by telephone on January 11, 2010. Mr. Bean participated personally. The employer participated by Carlos Rajas-Neira, Safety Manager.

ISSUE:

At issue in this matter is whether Mr. Bean was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bean was employed by Seaton Corporation from April 29, 2007 until October 15, 2008 as a full-time production worker. Seaton Corporation was contracted to perform services for P&G. At the time of hire, new employees are oriented as to which break room and smoking areas were designated for contract employees. Contract employees were to use a designated area so that there would be no confusion as to which employees were contract employees and which were P&G employees. It is a part of Seaton Corporation's contract with P&G that its employees use only the designated contract areas.

On September 25, 2008, Mr. Bean received a verbal warning after he was observed smoking in a P&G smoking area. On October 14, 2008, he was again caught smoking in the same area and, as a result, was discharged on October 15. His only explanation was that it was closer to his work area than the smoking area he was supposed to use. In making the decision to discharge, the employer also considered the fact that Mr. Bean had been verbally warned about his work pace. He was not meeting company standards, causing down time on his line.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had

the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The primary reason for Mr. Bean's discharge was his violation of the policy regarding designated smoking areas. In spite of being verbally warned on September 25 that he was smoking in the wrong area, Mr. Bean returned to that same area to smoke on October 14. His conduct showed a blatant disregard for the employer's standards.

Mr. Bean's conduct in smoking in the wrong area is sufficient, standing alone, to constitute disqualifying misconduct. Seaton Corporation had a contractual obligation to have its workers smoke in areas different from those used by P&G employees. Mr. Bean's conduct had the potential of adversely affecting the employer's business relationship with P&G. He knew who his supervisor was and knew that was the individual he was to take direction from. His blatant disregard for the employer's policy constituted a substantial disregard for the standards the employer had the right to expect. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated November 18, 2009, reference 01, is hereby affirmed. Mr. Bean was discharged by Seaton Corporation for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs