

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL P REED

Claimant

APPEAL NO. 10A-UI-06133-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO

Employer

OC: 03/21/10

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Michael Reed, filed an appeal from a decision dated April 13, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 10, 2010. The claimant participated on his own behalf. The employer, Van Diest Supply Company (Van Diest), participated by Director of Manufacturing Clark Vold and Personnel Manager Carolyn Cross. Exhibits One Two, Three, Four, and Five were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Michael Reed was employed by Van Diest from August 1, 2006 until March 23, 2010 as a full-time shipping and receiving operator. He received a copy of the employer's personnel policies and was aware of the progressive disciplinary procedures.

The claimant's job responsibilities involved monitoring the transfer of liquid chemicals from tanker trucks into storage containers and vice versa. He received a written warning for an incident on March 5, 2010, where he failed to close an internal valve on a tanker truck which resulted in a spill of 25 gallons of chemical. A follow up letter from Director of Safety and Industrial Hygiene Jim Piaszyrski on March 10, 2010, discussed the incident and notified him his job was in jeopardy if there were any further violations.

On March 17, 2010, the claimant was unloading a tanker truck to a specific storage tank. He did not check the distribution system to make sure the valves to the other tanks were closed. As a result a valve to a tank which was already full was left open and the chemical was pumped into the full tank, causing a spill of 170 gallons. The incident was investigated and the claimant admitted he had not checked the valves as required under company policies and his ordinary job responsibilities. He was discharged on March 22, 2010.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 claimant had received the employer's personnel policies and knew his job was in jeopardy as a result of the spill on March 5, 2010 if he was found responsible for any other incidents. In spite of this he did not properly check the valves on the tanks on March 17, 2010. As a result of this failure to follow procedure there was a spill of 170 gallons of chemical. This endangered the safety of other employees and resulted in a financial loss to the employer. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer.

DECISION:

The representative's decision of April 13, 2010, reference 01, is affirmed. Michael Reed is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css