

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L WILDEBOER
Claimant

APPEAL NO. 11A-UI-14259-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCED HEAT TREAT CORP
Employer

OC: 10/02/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Advanced Heat Treat Corporation filed a timely appeal from a representative's October 19, 2011, reference 01, decision that allowed unemployment insurance benefits. After due notice, a telephone hearing was held on November 29, 2011. Claimant participated personally. The employer participated by Ms. Gayla Hoppenworth, Human Resource Manager, and Mr. Adam Dehl, Production 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: David Wildeboer was employed by Advanced Heat Treat Corporation from April 4, 2005 until September 29, 2011 when he was discharged from employment. Mr. Wildeboer worked as a full-time heat treatment technician on the company's third shift and was paid by the hour. His immediate supervisor was Lyle Johlas.

Mr. Wildeboer was discharged after a review of company security tapes showed that the claimant had left the company premises on the night of September 12, 2011 without punching out and then upon the claimant's return he went on break exceeding the 15-minute break period and violated company policy by leaving the premises without punching out.

A review of the night of September 26, 2011 showed what the employer considered to be Mr. Wildeboer being inactive at work for extensive periods of time. The employer also believed that Mr. Wildeboer had not acted properly in re-lighting a malfunctioning furnace or in the alternative, properly reporting the matter resulting in a lack of production that night.

The company normally uses a progressive disciplinary policy that consists of various levels of warning, suspension and suspension prior to discharge. Company policy provides that an

employee is subject to a one-day suspension for leaving the premises without punching out. The company chose to escalate to discharge because of what it considered to be a repetitive nature of infractions by the claimant on the nights of September 12 and September 26, 2011.

When Mr. Wildeboer began work on the company's third shift, claimant was informed by his third shift supervisor that the two 15-minute break periods per night were not closely followed on the third shift and that employees routinely took two 30-minute breaks. It is the claimant's position that work on the third shift is at times delayed due to production space issues. Mr. Wildeboer believed that he had properly reported the malfunctioning furnace on the night of September 26, 2011 by reporting it to his immediate supervisor as he had done in the past.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v.

Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation it has not met its burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure or prior warnings. If an employer expects an employee to conform to certain expectations or face discharge, appropriate, preferably written, detailed and reasonable notice should be given.

Mr. Wildeboer testified that he had been told that the company's 15-minute break periods had been in effect relaxed on the third shift by the third shift supervisor. The claimant was reasonable in his belief that he would not be accountable for taking time in excess of 15 minutes for each break because other employees also exceeded the 15-minute time limit and the claimant or no other employees had been warned or counseled by their supervisor. The claimant testified that at times production is delayed on the third shift due to lack of available space for new production and testified that he felt that his manner of reporting a malfunctioning furnace was appropriate because he had reported it to his supervisor. Mr. Wildeboer was aware that leaving the premises without clocking out could result in a one-day suspension from work but did not anticipate that a single infraction would result in his termination from employment. The claimant was reasonable in his belief that under the company's progressive disciplinary policy that he would be given progressive warnings prior to being discharged.

When the employer reviewed security tapes and found a number of infractions of company policy, the company made a business decision to terminate Mr. Wildeboer. While the decision to terminate the claimant may have been a good decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes intentional disqualifying misconduct has not been shown. The evidence establishes the claimant had been given conflicting information from company management or by company expectations and the claimant had not been warned prior to being discharged. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated October 19, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs