

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENIS M DEMERS
Claimant

APPEAL NO. 13A-UI-04988-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

**OC: 03/31/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 19, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 3, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Deniece Norman participated in the hearing on behalf of the employer with witnesses, Kortney Fox and Josh Howell.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a utility worker from September 19, 2005, to March 28, 2013. His supervisor was Josh Howell. He was informed and understood that under the employer's work rules, failure to follow safety rules and to wear personal protective equipment was grounds for discipline.

On March 27, 2013, while the claimant was working on roll-form machine, it malfunctioned and to troubleshoot the problem, he went to one end of the machine to determine what the problem was. Finding nothing the claimant walked back to the other side of the machine. While he was walking to the other side of the machine, a safety door abruptly closed and scratched his arm. The claimant reported what had happened to maintenance and his supervisor. The supervisors mistakenly believed the incident happened when the claimant was reaching under the door, which was not accurate.

On March 28, the claimant's break was cut short and he had to hurry back to the line. He forgot to put his earplugs, which were required personal protective equipment for his job, back in. Howell approached him and asked if he was wearing earplugs. When claimant said no, Howell gave him earplugs, and he put them in as soon as he was able to. Howell thought he saw the claimant wearing a prohibited audio headset, which was not the case.

On March 28, 2013, the employer discharged the claimant for the alleged safety violations on March 27 and 28.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I did not believe the claimant put his hand under the door on March 27 or was wearing an audio headset on March 28. The claimant was negligent in forgetting to put his earplugs in when he returned to the line, but it was an isolated instance of negligence, not a willful act of misconduct.

DECISION:

The unemployment insurance decision dated April 19, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css