IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PAUL GABBARD
Claimant

ARCHER-DANIELS-MIDLAND CO
Employer

APPEAL NO: 14A-UI-09522-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/17/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 5, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 3, 2014. The claimant participated in the hearing. Bryce Albrechtsen, Human Resources Manager; Mark Mahmens, ADM Construction Superintendent; and Brandi Henry, Unemployment Insurance Consultant; participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time craft pipe fitter for Archer-Daniels-Midland from March 29, 2010 to August 20, 2014. He was discharged for "misuse of company funds or property for personal gain."

On August 12, 2014 there was a type of plant shutdown which resulted in the claimant's co-workers being assigned to work in other areas of the plant and leaving the claimant effectively alone in his work area. He worked on a piece of three-inch carbon pipe for a water heater in the plant that would hold 300 to 400 degree water.

The claimant used 309 wire for the weld which is not included in the employer's training and certification. Consequently, the claimant was not trained or certified by the employer to use that material on a three-inch carbon pipe.

"Based on materials and pressures in the pipe being welded, it is critical that the welds are performed in accordance with procedures. Failure of a weld being performed correctly can result in very serious safety rise to people working in the plant and significant liability to ADM. Based on the importance of the welds meeting the specified requirements, employees are trained and certified and a Quality Control welding professional examines the welds to assure that they are performed correctly" (Human Resources Manager Bryce Albrechtsen testimony.)

Prior to August 12, 2014 the claimant told co-workers he was taking the union welding test so he could potentially leave the employer and accept another position. He also told co-workers he took a union welding test using the 309 wire but failed to pass it.

The employer discovered the claimant used 309 wire on the three-inch carbon pipe when the welds were inspected by Quality Control August 14, 2014. The employer suspended the claimant pending an investigation of the situation and terminated his employment August 20, 2014 for failure to follow established procedures on which he had been trained and certified and misuse of company funds or property for personal gain, a violation of one of the employer's "cardinal rules."

The claimant testified he was not aware he could not use the 309 wire on the three-inch carbon pipe. He agrees he was not trained or certified by the employer on how to do that weld while he was trained and certified on other welding procedures but insisted that he viewed the trainings and certifications as required stepping stones to pay raises and that he did not know that meant he could not do any other types of welds. He practiced in the employer's shop. He thought the weld was appropriate and used material available to him.

Three craft welders, the superintendent, and the weld instructor walked by the claimant's work area and spoke to him while he was performing the welds in question and none of them told the claimant he should not be welding the three-inch carbon pipe with 309 wire. Employees do not have lists of materials they can and cannot use and the jobs do not specify what materials employees are to use on each job.

The claimant admitted he was interested in furthering his career by becoming a union welder but stated that situation and his failure of the union weld test with the 309 wire did not play a role in his decision to use that material in the weld August 12, 2014. The claimant stated he took pride in being able to use that material because it is difficult to use well and he had learned how to do it but his priority was putting the best weld in place.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.
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> 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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (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, butthe 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).

While the employer presented a compelling case and the administrative law judge does not necessarily disagree with its testimony or assessment of the evidence, there was a failure somewhere along the line that produced the unwanted result. The question is where does the fault lie; did the employer fail to make the policy clear or was the claimant aware of the policy and simply ignored it?

The employer alleges the claimant violated its policy and misused company funds or property for personal gain. Both parties testimony was credible. The employer firmly believes it conveyed its policy by requiring training and certifications on each weld it allowed to be used in the plant. The claimant's testimony indicated employees viewed the trainings and certifications as a means to an end with the end being a pay raise. The trainings and certifications were how the employer assessed employees and raised their pay according to their certifications. The evidence does not establish, however, that the claimant knew he was limited to only performing the welds he was certified to perform. Although at first blush that may seem illogical, the claimant's testimony that the certifications were viewed solely as stepping stones to pay raises and were not intended to limit what welds employees could use was persuasive.

While he did want to improve his skills and possibly move to a union welding job, that does not necessarily comport with the fact he used that weld to improve his chances of securing a union job. He had been practicing that weld at the employer's training facility and it is understandable that he would want to use his new knowledge when and where he felt it was appropriate to do so. While he did use the employer's property in the form of the 309 wire, it is too great a leap to conclude he used that weld for personal gain.

The employer's testimony does not contradict the claimant's statements that he wanted to do the best weld possible. It would appear that given the importance the employer places on only using the welds the employee is certified in performing, it would include the welds required with the job assignment. Additionally, several other management level employees walked by and/or stopped to talk to the claimant while he was doing this weld and none of them noticed or told him he should not be using the 309 wire on that weld. The significance of that is not that those employees would have stopped the claimant if he was doing an unacceptable weld but that the claimant did not make any attempt to hide his actions, indicating he truly did not believe he was doing anything wrong.

Finally, although the employer had some concerns about the claimant's ability to work safely and issued him a general written warning about safety on July 7, 2014, the August 12, 2014 incident was an isolated incident of misconduct and not an ongoing pattern of intentional job misconduct.

Consequently, under these circumstances, the administrative law judge must conclude that the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The September 5, 2014, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

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