IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GARY L HARTSOCK
Claimant

GRIMM BROTHERS PLASTICS CORP
Employer

APPEAL NO. 10A-UI-04584-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 05/17/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Grimm Brothers Plastics Corporation (employer) appealed a representative's March 19, 2010 decision (reference 03) that concluded Gary L. Hartsock (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 7, 2010. The claimant participated in the hearing. Linda Wilson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 17, 2008. He worked full-time as a forming machine operator on the third shift, four nights (Monday through Thursday) per week. His last shift worked was the shift that began at 7:30 p.m. on February 15 and ended at 6:00 a.m. on the morning of February 16, 2010. The employer discharged him on February 18, 2010. The reason asserted for the discharge was refusal to take a drug test as directed.

When the claimant attempted to report for work on the night of February 16, he was told by his supervisor that he could not return to work until he had taken a drug test. The reason the employer was directing the claimant submit to a drug test was that the employer claimed that all approximately 150 parts that the claimant had produced on the night of February 16 did not meet specifications and had to be scrapped. The full value of the parts would have been about $6,500.00, and the employer believed that, under its drug testing policy, it could require a drug test if there was damage of over $1,000.00. The claimant was taken aback by the statement that all 150 parts were bad, as he had several times that evening had the quality control inspectors verify that some of the parts he had questioned himself were not sufficiently out of spec to be discarded. He therefore told his supervisor that he wanted to wait on the testing to find out what the problems had been on the parts. His supervisor told the claimant to hold off on the testing until after talking to Ms. Wilson, the human resources manager and controller, as the supervisor did not know what the problems were with the parts himself.

Shortly after 8:00 a.m. on February 17, the claimant called for Ms. Wilson and left a message indicating he needed to find out what the problems were with the parts, as he questioned the claim of the amount of damage. She did not respond to him until she left him a message at 4:38 p.m., and that message was only that he call her. He attempted to call her about a half-hour later, but she had already left. He then called her again right after 8:00 a.m. to find out about what the problems had been with the parts. However, at that time he was told he was terminated, as he had failed to report for drug testing as directed.

The parts the claimant produced on the night of February 15 in fact were not scrapped. Rather, they were painted and shipped to the customer. The employer could not establish what kind of specific problems there were with the parts, and could not establish what if any discount was given to the customer for whatever deficiency there might have been with the parts meeting specs.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his failure to submit to drug testing as required. First, the administrative law judge concludes that the claimant did not "refuse" to submit to drug testing—he was making a good-faith effort to discover what the basis was for the employer's claim of the damage that triggered the directive that he submit to testing, and he understood from his supervisor that he need not pursue the drug testing until after he had gotten an answer from Ms. Wilson. It was not misconduct on the part of the claimant that prevented him from getting an answer on February 17, the day the employer had wished him to submit to testing.

Further, since the reason cited by the employer for discharging the claimant was that he had violated the employer's drug policy by refusing or failing to submit to a drug test, the employer's compliance with the drug testing law must be examined. In order for a violation of an employer's drug or alcohol policy to be disqualifying misconduct, it must be based on a test ordered and performed in

compliance with Iowa's drug and alcohol testing laws. Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003); Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999).

Under the law, an employer can only direct an employee submit to drug testing under specified circumstances; one of those circumstances is "reasonable suspicion." Iowa Code § 730.5-8-c. "Reasonable suspicion" includes a provision for testing where there is property damage only in one situation:

> Evidence that an employee has caused an accident while at work which resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.

Iowa Code § 730.5-1-i(5). Emphasis added.

The statute does not define "accident." However, it is clear from the context that the type of incident required is something more cataclysmic than general issues or problems with an employee's work performance. At best, the employer has only established that there was unsatisfactory job performance on the part of the claimant on the night of February 15; the employer has not established that there was an "accident" that led to the property damage. Further, given that the parts apparently were all salvaged and there is no evidence of what, if any, net loss was suffered by the employer, the employer has not established that there was in fact damage of over $1,000.00. As a result, the test required by the employer was not in substantial compliance with the drug testing law, and the claimant's failure to submit to that testing therefore cannot be the basis for a finding of misconduct or disqualification. Cosper, supra; Eaton, supra. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's March 19, 2010 decision (reference 03) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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