

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAY T BRANDNER

Claimant

APPEAL NO. 07A-UI-01158-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BALL PLASTIC CONTAINER CORP

Employer

**OC: 12/31/06 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated January 23, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 19, 2006. Claimant participated personally. Employer participated by Sandy Fitch, Talx Hearing Representative with witnesses Jolene Welp, Human Resources Manager, Shawn Bitters, Assistant Production Manager and Tim Malott, Production Manager.

ISSUE:

The issue in this matter are whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for the employer December 31, 2006.

Employer discharged claimant on January 4, 2007 because claimant refused to perform a job ordered by his supervisor. Claimant was told to work the Blow Molding machine. Claimant was not trained on this machine. Claimant had some training but not all required elements. Claimant had not completed the required items on the training agenda. Claimant had a final warning on his record.

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.

871 IAC 24.32(8) provides:

- (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge holds that the evidence has failed to establish that claimant was discharged for an act of misconduct when claimant violated the employer's policy concerning insubordination. Claimant was warned concerning this policy.

The last incident, which brought about the discharge fails to constitute misconduct because claimant refused to perform a job for which he was not trained. The lack of training created a safety issue. Claimant was well within his rights to refuse to perform work for which he was improperly trained. Therefore, claimant was not discharged for an act of misconduct and as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated January 23, 2007, reference 01, is affirmed. Unemployment insurance benefits shall be allowed, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs