

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE BROWN

Claimant

APPEAL NO: 10A-UI-03194-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO

Employer

OC: 01/31/10

Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Van Diest Supply Company (employer) appealed an unemployment insurance decision dated February 18, 2010, reference 01, which held that Shane Brown (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 14, 2010. The claimant participated in the hearing. The employer participated through Clark Vold, Director of Manufacturing and Carolyn Cross, Personnel Manager. Employer's Exhibits One through Five were admitted into evidence. 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:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production operator from February 5, 2009 through January 29, 2010 when he was discharged for repeated negligence. He received his first disciplinary warning on July 28, 2009 for violating company policy by accessing a personal vehicle during work hours. Subsequent warnings were issued for negligence.

The claimant received a written warning on October 15, 2009 for starting a pump without having someone watch the hose on October 7, 2009. His actions resulted in spilling ten gallons of Glycol flush on the ground. The claimant received a four week pay level reduction and was eliminated from the Safety Pays Bonus. He received another disciplinary warning on December 8, 2009 for ruining a batch of product. The claimant failed to properly check and close the valves on December 8, 2009 and mischarged Amine on the top of a finished product. He received a pay level reduction, a five-day unpaid suspension and was eliminated from the Safety Pays Bonus. The claimant was advised that further incidents would result in disciplinary action up to and including termination.

The final incident occurred on January 24, 2010 when the claimant was operating a forklift. He hit a scale with the forklift and knocked over a drum of Aromatic 200, spilling approximately 25 pounds of the liquid product on the floor. The employer discharged him on January 29, 2010 for the excessive number of spills and for failure to follow company batching and transferring policies and procedures.

The claimant filed a claim for unemployment insurance benefits effective January 31, 2010 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

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

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 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 (Iowa 1982). The claimant was discharged for repeated negligence that resulted in significant financial losses to the employer. Negligence does not constitute

misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). A series of accidents attributable to negligence, occurring periodically and with consistent regularity so as to produce substantial financial loss to the employer, will support the conclusion that the claimant is guilty of job misconduct. Hildebrand v. IDJS, (Unpublished, Affirmed by Operation of Law on 3/3 Split, Iowa App. 1986). The claimant's actions were not isolated incidents, and his performance did not meet the standards the employer has the right to expect of employees. While the evidence does not show that the claimant intentionally caused the accidents that led to his termination, the administrative law judge must conclude that the number of accidents in such a short period of time constitutes disqualifying job misconduct. Benefits are therefore denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated February 18, 2010, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs