

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES THOMPSON
Claimant

APPEAL NO. 06A-UI-10623-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURROWS PAPER CORP-ADP
Employer

**OC: 09/24/06 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Burrows Paper Corporation (employer) appealed an unemployment insurance decision dated October 23, 2006, reference 01, which held that Charles Thompson (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 November 14, 2006. The claimant participated in the hearing. The employer participated through Stephen Steiner, Human Resources Manager and Dianne Adkisson, Human Resources Payroll Administrator. Employer's Exhibits One through Seven 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 employer has three paper mills and three processing plants. The claimant worked in the Ft. Madison processing plant. He was hired on June 15, 1988 and worked as a machine operator, foreman, shift manager and maintenance manager before he was promoted to a plant manager in 2001. As a plant manager, he was ultimately responsible for what happened within the plant, good or bad. There do not appear to have been any significant problems in 2005 when he received an employee performance assessment which listed certain deficiencies addressing his management skills. However, his assessment rating was as a quality contributor as opposed to his performance needing improvement. A Ft Madison machine/plant audit completed on November 13, 2006 revealed numerous deficiencies. There were numerous employee complaints about the claimant's ability to manage around that same time. The most common complaint was that the claimant had difficulty remembering things and several employees were concerned he was developing Alzheimer's. His supervisor listened to the other employees and met with the claimant on November 18, 2006. The claimant was placed on a two-week paid leave and mandated to attend counseling and have a full physical before he returned to work. He returned to work but there were

continued concerns about his leadership abilities so he was placed on a 90-day performance improvement plan on January 4, 2006.

The plan included specific corrective actions that had to be taken by certain dates. The claimant successfully completed the corrective actions listed on the performance improvement plan by February 22, 2006. His supervisor completed a formal report stating the plant looked much better and items were more organized. There was still some work needing to be done with maintenance though and the claimant was made aware of this fact. No further complaints were mentioned and no problems were discussed until the owner walked through the plant in approximately September 2006. The owner found numerous safety problems and advised the claimant's supervisor to address these issues. The supervisor completed his own tour on September 19, 2006 and saw that housekeeping was not being done properly and the machines were in poor running condition and not being maintained. The supervisor also found some safety steps were being by-passed and safety guards on machines had been removed. The claimant was notified of the problems and immediately took action to rectify the problems but was discharged on the following day.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 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 claimant was discharged for poor work performance. He had worked as the plant manager since 2001 but only had problems in 2005 and the beginning of 2006. These problems were resolved and no further disciplinary action was taken until he was abruptly discharged on September 20, 2006. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. Although the claimant was held responsible for the entire plant, the employer failed to produce evidence of any intentional wrongdoing on his part. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated October 23, 2006, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/cs