

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DON W SIMNIOK
Claimant

APPEAL NO. 07A-UI-03796-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEYERHAEUSER COMPANY
Employer

**OC: 03/18/07 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Don W. Simniok (claimant) appealed a representative's April 4, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Weyerhaeuser Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on April 30, 2007. The claimant participated in the hearing. Dave Stock, the employer's safety and training coordinator, 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

After the claimant had worked about 17 years for the employer, he resigned on July 6, 2006. The employer rehired the claimant on August 19, 2006, as a full-time maintenance mechanic. The claimant understood the union contract prohibited employees from taking another employee's property.

In the fall of 2006 an employee could not find his \$350-\$370 tool. The employee accused the claimant of taking his tool. The claimant had not taken the tool. The employer did nothing then because there was no proof that any one person had taken the tool. Although the claimant had not taken the employee's tool, he later found it. When the claimant found the tool, he decided he would take the tool to the pawn shop and get some money to retaliate against the employee who had been accusing him of taking the tool.

On March 5, 2007, the employer received a police report indicating the claimant had pawned the tool. The claimant verified he had ultimately taken the tool. The claimant did not return the tool to the employee because he concluded the employee would still accuse him of taking the

tool in the first place. On March 9, 2007, the employer discharged the claimant because he violated union contract rules.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Even though the employer does not contest the claimant's receipt of unemployment insurance benefits, the reasons for the claimant's employment separation cannot be for work-connected misconduct. The facts establish the claimant knew the employer did not allow employees to take property of another employee. After the claimant found the employee's missing tool, he did not return it to the employee. Instead, he pawned the tool and received money. This amounts to work-connected misconduct. Since the claimant committed work-connected misconduct, he is not qualified to receive unemployment insurance benefits. As of March 18, 2007, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 4, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 18, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw