

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACOB A VENHORST
Claimant

APPEAL NO. 09A-UI-15713-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OLYMPIC STEEL IOWA INC
Employer

**Original Claim: 09/20/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jacob VenHorst filed a timely appeal from a representative's decision dated October 9, 2009, reference 01, which denied benefits based upon the claimant's separation from Olympic Steel Iowa, Inc. After due notice was issued, a telephone hearing was scheduled for and held on November 25, 2009. The claimant participated personally. The employer participated by Melissa Schmidt, human resource representative, and Brian Rolf, operations manager. Exhibits One and Two were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jacob VenHorst was employed by Olympic Steel of Iowa from January 23, 2006, until September 17, 2009, when he was discharged from employment. The claimant held the position of full-time laser operator and was paid by the hour.

The claimant was discharged after engaging in horseplay during work hours in the production area on September 17, 2009. That evening, the claimant reported to his supervisor that he had "pretended" to spray a rust-inhibiting liquid into the facial area of another area and that the other worker had become extremely angry and upset at Mr. VenHorst's actions. The company investigated and, based upon the statements made by the employees at that time, reasonably concluded that Mr. VenHorst had actually sprayed the liquid onto a portion of the other worker's face. The other worker in turn had become angry, throwing an object at Mr. VenHorst and disrupting the work area. The company further investigated and took statements from other workers, who verified that the claimant had engaged in conduct that was disruptive and appeared to have sprayed the liquid at the other worker.

Although both Mr. VenHorst and the other worker subsequently denied spraying liquids at each other, the employer concluded that the claimant's conduct had been a violation of the company's safety policies and discharged the claimant.

It is the claimant's position that he had not actually sprayed the other worker but instead made a "hissing" sound to duplicate the sound of the spray bottle. The claimant's purpose was to make the other worker believe that he had been sprayed by the liquid as Mr. VenHorst passed.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The evidence in the record establishes that the company has a strict safety policy and that the claimant was aware of the policy. The claimant's intentional act of spraying or pretending to spray a potentially caustic liquid into the face of another worker was intended to disrupt the other worker and to cause a reaction from him.

As the claimant intended and should have anticipated, his conduct did in fact cause a reaction from the other worker, disrupting the production area, and the other worker became angry and

attempted to retaliate. Other workers had reported that Mr. VenHorst had also either sprayed or pretended to spray them that evening with the same or similar liquid.

The administrative law judge concludes, based upon the totality of the evidence in the record, that the claimant's conduct showed a willful disregard for his employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Act. Benefits are withheld.

DECISION:

The representative's decision dated October 9, 2009, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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