

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM R PARSLEY
Claimant

APPEAL NO. 14A-UI-02555-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

C-FAB LLC
Employer

OC: 02/02/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated February 25, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 31, 2014. Claimant participated. The employer participated by Mr. Todd Cleppe, Company Owner, and Mr. Brian Dirks, Field Supervisor.

ISSUE:

The 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: William Parsley was employed by C-Fab LLC from September 16, 2013 until February 5, 2014 when he was discharged from employment. Mr. Parsley was employed as a Field Lubrication Technician assigned to work at an ADM facility. Mr. Parsley was employed full time and was paid by the hour. His immediate supervisor was Brian Dirks.

Mr. Parsley was discharged on February 5, 2014 after the claimant was involved in an incident where a safety guard had been removed from equipment without the equipment being property locked out/tagged out, and the employer had concluded that the claimant was unwilling to accept the seriousness of the incident or that he had engaged in wrongdoing.

C-Fab LLC performs lubrication services for an ADM facility and C-Fab LLC and its employees are bound by the strict safety rules that are imposed by the client facility. Both C-Fab LLC and the ADM company place the highest emphasis on adherence to safety rules and guidelines. All employees are aware that violations of serious safety rules such as lock out/tag out requirements result in immediate dismissal from employment.

On February 3, 2014, Mr. Parsley had been given a job assignment to grease copper fittings in the ADM facility and the claimant was being assisted by an employee with less seniority. The

normal practice that day was to move protective shrouds a little to one side or the other to allow the grease gun to reach grease fittings on the couplers. Subsequently, Mr. Parsley and his co-worker encountered a safety guard that could not be manipulated from side to side to allow greasing. While attempting to move the guard from side to side, the other employee noticed that the shroud had not been bolted into place and could be picked up and removed thus allowing access to the grease fittings that needed to be serviced. When the other employee removed the 18 x 7" shroud from the area that it protected, Mr. Parsley did not immediately stop and replace the guard or report the incident, but instead went on to grease the newly exposed portion of the drive line. The claimant was observed greasing the unprotected fitting by another company employee who immediately recognized it as a serious safety violation and reported it to management.

Because neither Mr. Parsley or his co-worker had locked out and tagged out the machine before removing the guard and servicing the machine as required by the strict ADM and C-Fab LLC policies, they were questioned that day by both the company owner and the company's field supervisor.

During the questioning about the matter, although Mr. Parsley agreed that the act was a serious violation of company and ADM safety policies, Mr. Parsley did not accept any personal blame for the incident asserting that it was the other worker who had removed the guard. At the end of the meeting Mr. Parsley considered the matter closed, however, the company owner and the field supervisor considered the matter further. Because the claimant had past issues in arguing with his supervisor over work directives and the claimant's failure to recognize that he also was at fault for the most recent incident, a decision was made to terminate Mr. Parsley from his employment with the company.

It is the claimant's position that the other employee removed the safety guard in violation of company and ADM policies and that the claimant only continued to grease the mechanism without the guard because it was convenient and time saving to do so.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge 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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the claimant was discharged not only because he had participated in an act that clearly violated C-Fab LLC and the client company's safety lock out/tag out procedures, but also because the claimant did not recognize his conduct in the matter as being at fault.

During the incident in question, a second C-Fab LLC employee had removed a safety guard from machinery that was being serviced. Although the claimant clearly knew that performing any service or maintenance work on a piece of machinery at the plant that was not locked out/tagged out or protected by a safety guard was a clear violation of the client company's policy, the claimant nevertheless continued to service the equipment without the machinery being locked out/tagged out and without the protective guard. When warned, the claimant was unwilling to sufficiently recognize his fault in the matter.

The claimant's failure to follow the strict lock out/tag out procedures that he was aware of and his failure to acknowledge the significant role that he played in the violation of company safety rules showed a willful disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. The claimant's discharge thus took place under disqualifying conditions. 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 and is otherwise eligible.

DECISION:

The representative's decision dated February 25, 2014, 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 and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs