

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCUS D WILLSON-HAMILTON
Claimant

APPEAL NO. 10A-UI-02022-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

**Original Claim: 01/10/10
Claimant: Respondent (1)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated February 1, 2010, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 18, 2010. The claimant participated. The employer participated by Clark Vold, director of manufacturing, and Corolyn Cross, personnel manager. The record consists of the testimony of Clark Vold; the testimony of Corolyn Cross; the testimony of Marcus Willson-Hamilton; and Employer's Exhibits 1 through 8.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case distributes and formulates agricultural chemicals. Its plant is located in Webster City, Iowa. The claimant was hired on November 24, 2008, as a full-time production operator. He was terminated on January 12, 2010.

The incident that led to his termination occurred on January 9, 2010. The claimant went to the restroom and then stopped by the laboratory to check on something. He started talking to some of the lab personnel and lost track of time. As a result, he was absent from his work area from 9:49 p.m. to 10:30 p.m. He was terminated due to the length of time he was gone from his own work area. He had never been disciplined for any reason in the past.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the duties owed by the worker to the employer. The legal definition of misconduct excludes good-faith errors in judgment or discretion. The employer has the burden of proof to show misconduct.

There is insufficient evidence in this case to establish misconduct. The claimant simply lost track of time while talking to lab personnel after checking on some data. There is no evidence that the claimant was habitually absent from his work site or that talking with other employees was a persistent problem. The claimant simply made a mistake and a mistake in judgment or discretion is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated February 1, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw