

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY COLLINS

Claimant

APPEAL NO: 13A-UI-05407-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCED COMPONENT

Employer

OC: 12/23/12

Claimant: Appellant (1/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
871 IAC 24.32 (9) - Suspension/Disciplinary Layoff

STATEMENT OF THE CASE:

Larry Collins (claimant) appealed an unemployment insurance decision dated April 29, 2013, reference 02, is affirmed, which held that he was not eligible for unemployment insurance benefits because he was placed on disciplinary suspension from Advanced Component (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa on June 24, 2013. The claimant participated in the hearing. The employer participated through Tim Woodle. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the employer suspended 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 claimant was hired as a full-time production worker on June 27, 2011 and continues to work in that same capacity. He was suspended for three days ending March 21, 2013 pursuant to the employer's progressive disciplinary policy which includes a verbal warning, a written warning, a three-day suspension before termination occurs. The claimant was aware of the employer's progressive disciplinary policy. The employer treats attendance violations under a different program.

The claimant received a verbal warning on August 28, 2012 for smoking outside the break room on an unauthorized break. He received a written warning on January 18, 2013 for a safety violation when he failed to lock out/tag out a machine. The claimant received his three-day suspension for eating a pastry at his CNC 1 workstation on March 13, 2013. The employer's written policy prohibits employees from eating food on the manufacturing floor. The claimant signed the warning without comment but later filed a complaint stating that he was not eating at his work station but he addressed numerous other issues. The employer investigated the matter and concluded the claimant did violate company policy. He did admit that he had an open package that contained a pastry which had been partially eaten.

The administrative law judge saw that the claimant had claimed and was paid partial benefits for the week ending March 30, 2013 even though he worked his full-time hours that week.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined in this matter is whether the claimant's disciplinary suspension and subsequent termination were for disqualifying reasons. When an individual is unemployed as a result of a disciplinary suspension imposed by the employer, the individual is considered to have been discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9). An individual who was discharged or suspended for misconduct is disqualified from receiving job insurance benefits. See Iowa Code § 96.5-2-a. Misconduct is defined as deliberate actions contrary to the employer's interest. See 871 IAC 24.32(1).

The claimant was suspended for three days ending March 21, 2013 pursuant to the employer's progressive disciplinary policy. While the claimant contends he did nothing wrong and argues that his actions were not detrimental to the employer, the fact is he violated company policy after receiving two previous warnings. The employer investigated his concerns and concluded that his actions were in violation of company policy regardless of whether or not he happens to agree with the policy or not. Consequently, his actions amount to work-related misconduct and benefits are denied.

An issue as to whether the claimant reported income for the week ending March 30, 2013 arose as a result of the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded to Quality Control for an investigation and determination as to whether the claimant had earned but unreported wages. 871 IAC 26.14(5).

DECISION:

The unemployment insurance decision dated April 29, 2013, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was suspended from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The case is remanded for a review and determination on the unreported wage issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs