

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT H STERLER
Claimant

APPEAL NO. 08A-UI-10695-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

V T INDUSTRIES INC
Employer

**OC: 10/12/08 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Scott H. Sterler filed a timely appeal from an unemployment insurance decision dated November 6, 2008, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held December 5, 2008 with Mr. Sterler participating. Maintenance Manager Steve Roberts, Lead Worker Brian Kell and Human Resources Administrator Kathy Sindt participated for the employer. Documents submitted by the employer on the day before the hearing were not included in the record because the employer had not gotten copies to the claimant.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Scott H. Sterler was employed by V T Industries, Inc. from January 5, 1998 until he was discharged October 15, 2008. He last worked in maintenance support. On October 14, 2008, Mr. Sterler made a series of comments to a co-worker who is a Nebraska football fan that the Nebraska team “sucks.” Mr. Sterler kept up his comments until the co-worker complained to management that he was contemplating resigning because of what he viewed as harassment. Mr. Sterler was discharged on the following day after being told that the company did not wish to lose any employees because of him.

Mr. Sterler had received warnings in the past for harsh and argumentative behavior towards co-workers. He had also received a warning on September 22, 2008 when management could not find him in the plant for a lengthy period.

The company has a policy that requires courteous and professional behavior on the job.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. 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 persuades the administrative law judge that Mr. Sterler was discharged for a continuing pattern of rude behavior towards his co-workers. The record persuades the administrative law judge that Mr. Sterler had been placed on notice that continued behavior of this sort would lead to his discharge. Benefits are withheld.

DECISION:

The unemployment insurance decision dated November 6, 2008, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs