

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON G MOORE
Claimant

APPEAL NO: 11A-UI-12570-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VALERO SERVICES INC
Employer

OC: 08/28/11

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jason G. Moore (claimant) appealed a representative's September 16, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Valero Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 18, 2011. The claimant participated in the hearing. Bob Abbott appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 30, 2009. He worked full time as maintenance technician in the employer's Charles City, Iowa ethanol plant. His last day of work was August 29, 2011. The employer discharged him on that date. The reason asserted for the discharge was being uncooperative and refusing to comply with directions regarding a safety issue.

On or about August 22 the claimant was doing some welding near an open sump pump pit; the sparks triggered a small fire. The employer then discussed methods for reducing the fire risk, and initially determined to put a special blanket over the pit. A group meeting was held on about August 24 in which the supervisor instructed the staff to use the blanket. The claimant voiced concern during the meeting that this was not a proper method to resolve the problem as the blanket would actually trap fumes and increase the fire hazard. The employer asserted that during the meeting the claimant indicated he refused to comply with the instruction. However, while he voiced his concerns, he did not refuse to comply with the instruction and did in fact follow that procedure until the safety personnel intervened and indicated that in fact the use of the blanket was causing the fume concentration level to become too high.

Because of the employer's belief that the claimant was refusing to comply with a directive, and given that he had previously been given a written warning on November 4, 2010 for uncooperative behavior and a final warning on March 11, 2011 for a lock-out/tag-out safety violation, the employer determined to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is that he allegedly refused to comply with a safety instruction. The employer relies exclusively on the second-hand account from another person; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the person who made the report might have been mistaken, whether he is credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of the person's report. The claimant acknowledged expressing concern regarding the wisdom of the instruction, but denied that he failed to comply with the instruction or that he indicated a refusal to comply. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant did fail to comply with the instruction or did more than voice a valid concern about the instruction. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's September 16, 2011 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs