

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN M GARRISON
Claimant

APPEAL NO. 13A-UI-06518-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RING-O-MATIC INC
Employer

OC: 05/05/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 23, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 24, 2013. The claimant did along with his witness Gordon Shinn participate. The employer did participate through Nick McCarrick, Account and Human Resources, (representative) Joel Haveman, Production Manager; Brian Archer, Assembly Manager and Tony Banker. Head Painter. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a shipping and receiving clerk full time beginning August 15, 2011 through April 30, 2013 when he was discharged. The employer's policies, a copy of which had been given to the claimant put employees on notice that any employee who receives three corrective action notices within a one-year period will be discharged. The claimant received his first warning notice on August 8, 2012 and his second on August 27, 2012. Both notices clearly warned him that if he received a third warning notice, he would be discharged.

The claimant was to work as the shipping and receiving clerk and was only to work on the assembly line if he had all of the shipping and receiving work done. In January 2013 the claimant was told by Mr. Haveman that due to his poor performance in the shipping/receiving job he would not receive a pay raise. Whenever the claimant asked for training or additional instruction he was given the requested help. Mr. Haveman had numerous verbal conversations with the claimant about the number of errors he was making. On April 3, Mr. Haveman had an additional conversation with the claimant and specifically discussed with him that he was responsible for insuring that the shipping/receiving work was done correctly. The claimant had absences due to his wife's pregnancy. The claimant's attendance played no part in employer's decision to discharge.

On April 30, Mr. Haveman pulled the claimant in to discuss the errors listed in the April 30, 2013 final warning notice and termination notification. The claimant grew angry, would not sign the notice nor discuss it with Mr. Haveman. Mr. Haveman made clear that none of the twelve mistakes listed on the notice had anything to do with any computer problems or anyone else's errors. The mistakes were all attributed to the claimant's failure to correctly perform his job duties in a timely and thorough manner. The claimant was capable of correctly performing his job duties and on occasion did demonstrate the ability to meet the employer's expectations.

Mr. Shinn made clear that he had no supervisory authority over the claimant with regard to his shipping/receiving duties, only to the work the claimant performed on the assembly line. The claimant was to work on the assembly line only when he had completed all of his shipping/receiving duties. The claimant was never required to work on the assembly line if he had shipping/receiving duties to perform. The claimant did work on the assembly line from time to time, indicating that he believed he had all of his shipping/receiving duties completed. The claimant had time to complete his duties but could not seem to consistently complete them without ongoing mistakes.

After verbal warnings or conversations with Mr. Haveman, the claimant would improve for a time, and then would again slip back into making the same mistakes. The employer specifically believed that the claimant simply spent too much time talking to delivery personnel and some of his coworkers. Even the claimant's own witness Mr. Shinn confirmed that the claimant spent too much time chatting with others when he could have been completing his job duties.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The administrative law judge is persuaded that the claimant had the skills and abilities to correctly perform the job duties required of him. The claimant just did not pay enough attention to detail to complete the tasks correctly and in a timely manner. Claimant's repeated failure to accurately perform his job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The May 23, 2013 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs