

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LESTER JONES
Claimant

VAN DIEST SUPPLY CO
Employer

APPEAL 16A-UI-05681-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/24/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 11, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for failing to follow instructions in the performance of his job. The parties were properly notified of the hearing. A telephone hearing was held on June 8, 2016. The claimant, Lester Jones, participated. The employer, Van Diest Supply Company, participated through Lee Trask, vice president of manufacturing; Kevin Spencer, director of plant operations; Carolyn Cross, personnel manager. Employer's Exhibits 1 through 8 were received and admitted into the record without objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a production operator from November 11, 2014, until this employment ended on April 22, 2016, when he was discharged.

Claimant began a new batch without verifying that the valves and pump were properly shut off, despite knowing he needed to do this and signing off on having done this. (Employer's Exhibit 3) This inattention caused claimant to overflow a tank, which spilled several hundred gallons of material. Claimant and his supervisor concocted a lie that a leaking sprinkler caused a water spill, in an attempt to cover up what had happened. During a conversation with Trask about the incident, claimant admitted that he lied about what happened and explained that he lied because he was instructed to do so by his supervisor. Claimant testified he knew he made an error, and he and the supervisor lied because they both had made mistakes and did not want to get punished. The employer testified that claimant's supervisor was also discharged due to this incident.

On November 5, 2015, claimant had committed a batching error when he added too much of a certain product to the batch he was making. (Employer's Exhibit 5) Claimant testified that he thought the material was measured in pounds but it was actually measured in kilograms. Claimant received a five-day suspension for this error. (Employer's Exhibit 5) Claimant was aware his job was in jeopardy and knew he could lose his job for the error he committed on April 21.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying job-related misconduct. Benefits are withheld.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be

“substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp’t Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Here, claimant made an error that was likely the result of mere carelessness. However, claimant attempted to cover up the error by conspiring with his supervisor to lie and protect their jobs. Claimant’s argument that he only lied because his supervisor instructed him to is not persuasive. Claimant knew at the time he made the error that it placed his job in jeopardy, and he knew that lying about what happened would protect his job. Claimant’s decision to lie to the employer about the cause of the spill was a deliberate act that was certainly in disregard of the employer’s interest. Benefits must be withheld.

DECISION:

The May 11, 2016, (reference 01) unemployment insurance 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.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/pjs