

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DENNIS W LOOKER
Claimant

CEMEN TECH INC
Employer

APPEAL NO. 14A-UI-09020-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/10/14
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 26, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 17, 2014. Claimant participated personally, and was represented by counsel Laura Johntz. Employer participated by Stacy Early with witness Jami Matice. Employer's Exhibits 1-3 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 7, 2014. Employer discharged claimant on August 7, 2014 because claimant engaged in a very dangerous activity in violation of safety procedures which resulted in an accident which could have been life-threatening.

Claimant climbed into a running cement bin in order to clean out the bin. Claimant got his pants caught in the machine and was nearly formally injured or killed in the process. Claimant had cleaned the machine approximately 50 times during 14 years working for the company. During all of the occasions when claimant had cleaned the cement bin, he would turn off the bin before he entered the bin. On the particular occasion when claimant was injured, he climbed inside a running cement bin. Claimant stated that on this occasion the bin contained different material than it normally did, and running the bin while cleaning it made the job go much quicker.

Claimant had never been in the bin while it was running previously. Claimant knew that it was dangerous to get inside of the running bin, although he had never been particularly taught the correct procedures for cleaning out the bin. Claimant knew this because of "common sense."

Employer terminated claimant for his actions because they violated safety protocol. Claimant had never been specifically warned about climbing in the bin while it was running as employer had never seen him do that action in 14 years of cleaning the bin.

REASONING AND CONCLUSIONS OF LAW:

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or

disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. This incident involved an extremely dangerous activity. The action of climbing in a running cement bin could very easily injure or kill a worker.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning safety procedures. Claimant was not warned concerning this policy, as it specifically concerned not climbing inside a running cement bin to clean it out, but did get safety training.

The last incident, which brought about the discharge, constitutes misconduct because claimant's willful actions ran very far afoul of safety protocol and put his life in danger. Employer could have been subject to great liability if claimant had been seriously injured or killed. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated August 26, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css