

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DANIEL J REBIK
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BALL PLASTIC CONTAINER CORP
c/o TALX EMPLOYER SERVICES
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 06A-UI-02053-DT
OC: 01/08/06 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Daniel J. Rebik (claimant) appealed a representative's February 13, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Ball Plastic Container Corporation (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on March 10, 2006. The claimant participated in the hearing. Tiffany McMaster of TALX Employer Services appeared on the employer's behalf and presented testimony from two witness, Jolene Welp and Josh Mills. During the hearing, Employer's Exhibits One through Four 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 August 30, 2004. He worked full time as a process technician operating a palletizer at the employer's Ames, Iowa plastic container manufacturing facility. His last day of work was December 27, 2005. The employer suspended him that day and discharged him on December 29, 2006. The stated reason for the discharge was repeated safety procedure violations.

In January 2005 the claimant fell and broke his arm after standing on one foot on the top rung of a ladder. In May 2005 he was placed on a performance plan for issues including running in the production area. His prior failure to follow safety procedures was noted in his performance review presented to him October 31, 2005. On November 18, 2005 a coworker pursued problem resolution with the claimant due to concerns regarding the claimant's unsafe behaviors. On December 21, 2005, against the employer's policies the claimant used a pocket knife he had brought from home to cut and dislodge a bottle that was stuck on the line. He did slightly cut his finger. As a result, on December 22, 2005 he was given another performance plan that specified he was not to rush and he was to use proper equipment in performing his duties.

On December 27 the claimant observed that two of the pallets at the top of the machine he was operating were misaligned and would not have dropped down properly. Rather than getting a forklift, as they were working one forklift short, or a ladder, which would have been beside another machine, the claimant got up on the metal safety guard surrounding the machine. The guard was about four feet off the ground. The claimant either stood or knelt on the guard (determination of which does not change the outcome of this decision), and reached with his hands up into the machine area to nudge the pallets into alignment. Mr. Mills, the department manager, was walking about 35 feet away and saw the claimant take this action. He was not able to act quickly enough to stop the claimant, but then went to report the claimant's actions.

The employer has very specific safety rules of which the claimant was on notice, which specify under item 10: "When pulling jams, always use proper tools such as tongs or pliers. Always plan your actions so that the freed jam will not jeopardize you or anyone else." Item 15 specifies: "Never use makeshift or defective scaffolding, rigging, or stages." Item 26 states: "Never take 'short cuts.' If you don't know the safe way, stop and find out."

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but 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 decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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); Iowa Code §96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Even though the claimant's actions on December 27, 2005 did not cause him injury, his actions were contrary to the employer's policies which were designed to minimize the risk of injury. The claimant's actions shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's February 13, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of December 29, 2005. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

ld/tjc