

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH H PEARCE
Claimant

APPEAL NO: 10A-UI-09372-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

POWERFILM INC
Employer

OC: 07/05/09
Claimant: Appellant (1)

Section 96.5-2-a - Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 22, 2010, reference 01, that held he was discharged for misconduct on April 23, 2010, and benefits are denied. A telephone hearing was held on August 17, 2010. The claimant, and his Attorney, Angelina Thomas, participated. Marcella Burkheimer, HR Manager, participated for the employer. Employer Exhibit A, and Claimant Exhibits 1 through 11 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began full-time employment as a machinist on January 18, 2007, and last worked for the employer as a full-time electrician on April 23, 2010. The claimant was issued a written warning on April 23, 2010 for unauthorized overtime, absenteeism, and unprofessional behavior. The April 23 warning specifies the claimant's unprofessional conduct as an ongoing negative attitude to include rude, argumentative and hostile conduct. The warning put the claimant on notice that a further incident could lead to termination. The claimant was instructed to clock-out and leave for the day as a cooling-off period. Prior to leaving, the claimant was told by his supervisor to have a good day. The claimant responded "don't fuck with me when I'm not on your time". The statement was made in the break-room in front of other employees. The employer discharged the claimant for his unprofessional conduct on April 23 in light of prior discipline.

Employer representatives verbally warned the claimant on February 26, 2010 about needing pre-approval to work overtime that exceeds fifteen minutes a day. The employer issued the claimant a written warning on March 22 for having five occurrences of unauthorized overtime since March 1.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on April 23, 2010.

The employer put the claimant on notice during the April 23 disciplinary warning that he had demonstrated unprofessional behavior and his negative attitude had reached the point he was being sent home for the day to cool off. The claimant's refusal to sign the written warning is an act of misconduct though the employer did not discipline him further for it. Green v. IDJS, 299 NW2d 651 (Iowa 1980). Although the claimant denies using the word "fuck" when responding to his supervisor's statement to have a nice day, his defiant statement in front of other employees in the break-room is misconduct, and when considered in light of the prior discipline, constitutes job disqualifying misconduct.

DECISION:

The department decision dated June 22, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on April 23, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css