

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON A HARING
Claimant

APPEAL NO. 13A-UI-09267-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 04/14/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated July 23, 2013, reference 02, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on September 16, 2013. Claimant participated. The employer participated by Mr. Michael Payne. Employer's Exhibits One, Two, and Three were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

Jason Haring was employed by Advance Services, Inc. from October 15, 2012 until June 26, 2013 when he was discharged from employment. Mr. Haring last was assigned to work as a general laborer at the Pioneer Hybrids company. The assignment began on May 23, 2013.

The claimant was discharged on June 26, 2013 for failure to wear mandatory eye protection while performing his duties at the client location, Pioneer Hybrids. Mr. Haring was aware that employees must wear protective eyewear at all times when in the plant and that there is a "zero tolerance" for failure to follow safety procedures. Mr. Haring had previously received a warning for failure to follow safety procedures while assigned at the Pioneer Hybrids facility.

On June 26, 2013, Mr. Haring could not find his face/eye protective gear in his work area and informed the lead person that he needed to have the protective face shield. Although Mr. Haring had been warned before, he nevertheless began performing work without the required eye protection endangering himself and Advance Services' contract with their client. Mr. Haring also reported back from lunch approximately five minutes late after inadvertently falling asleep in his car during the lunch period. Claimant's discharge was related to the safety violation.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter, Mr. Haring was aware of the strict requirement that all employees assigned to work at the Pioneer Hybrids facility must wear protective eyewear at all times while performing their duties at the facility. In addition to receiving a copy of the rules and acknowledging a receipt of the rules, Mr. Haring had also received a specific warning from his employer for failing to follow the rule in the past. When Mr. Haring again failed to follow the required safety rule, he was discharged from employment because his conduct jeopardized his own safety and the contract between Advance Services and their client.

Because the claimant was aware of the strict zero tolerance safety rule and had been specifically warned in the past, the administrative law judge concludes that the employer has sustained its burden of proof in showing the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated July 23, 2013, reference 02, is affirmed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs