

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARIO POPOVIC
Claimant

APPEAL NO. 08A-UI-08004-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

**OC: 07/06/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Beef Products, Inc. (employer) appealed a representative's August 29, 2008 decision (reference 01) that concluded Dario Popovic (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 1, 2008. The claimant participated in the hearing. Jennifer Stubbs and Rick Wood, a human resource manager, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 1, 2006. The claimant worked as a full-time maintenance employee. The claimant understood that in accordance with the employer's policy an employee could be discharged if the employer had three safety violations in a year.

On October 10, 2007, the claimant received a written warning for failing to remove his lock from equipment before he left work for the day. The employer gave the claimant the written warning because he should have notified the on-coming manager that the equipment was not repaired so the claimant could take off his lock and the on-coming employee could put his lock on the equipment that still needed repairs. Even though the claimant had received a warning for a previous safety violation, he had no idea his job was in jeopardy after he received the October 10 written warning.

On June 26, 2008, the claimant was in charge of his shift. During this shift, the claimant and other employees worked on the employer's hydraulic pressure system. Oil leaked out when not all valves had been de-energized properly. The claimant believed the valves had been properly

de-energized. As the person in charge that day, the employer held the claimant responsible for the oil leak and for failing to properly de-energize and shut off the valves. On June 28, the employer suspended the claimant until July 1, 2008 for this incident.

On June 26 a group of employees, including the claimant, had worked on a piece of equipment that was in an isolated area. The guard was removed from the equipment. At the end of the day, employees, including the claimant, removed their locks from the equipment. Before the claimant went home, he told the next shift supervisor about problems with the equipment his group had tried to fix. This employee told the claimant he would look at the equipment.

The other employee did not look at the equipment. When the claimant left work on June 28 he did not remember that the guard had not been replaced. On June 30, the safety manager found the guard off the machinery with no lock on the equipment.

When the claimant returned to work on July 1, the employer again suspended him for his removing his lock and for failing to notify the next supervisor about the equipment. On July 7, the employer discharged the claimant for having too many safety violations in accordance with the employer's policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

The employer established business reasons for discharging the claimant pursuant to its safety policy. The facts do not establish that the claimant intentionally violated the employer's safety procedures. On June 26, the claimant took his lock off the equipment, but told the on-coming supervisor about the problems with the equipment and received assurances the supervisor would look at the equipment. The claimant forgot no one had put the guard back on.

Also, the claimant did not intentionally fail to de-energize valves on June 26. Looking at the evidence that is most favorable to the employer, assume the claimant did not de-energize a valve correctly, the facts do not establish that he deliberately failed to perform this job correctly. He may have been negligent, but the facts do not support a conclusion that he was negligent to the extent that he committed work-connected misconduct.

The claimant made mistakes on June 26, but he did not intentionally or substantially disregard the employer's interests. The claimant did not commit work-connected misconduct. As of July 6, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's August 29, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of July 6, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employers' account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css