

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY A FROST
Claimant

APPEAL NO. 11A-UI-07937-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**VERMEER MANUFACTURING
COMPANY INC**
Employer

OC: 05/08/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Timothy Frost (claimant) appealed a representative's June 6, 2011 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Vermeer Manufacturing Company (employer) for falsifying his application for hire. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 12, 2011. The claimant was represented by Thomas Berg, Attorney at Law, and participated personally. The employer participated by Becky Fowler, Human Resources Business Partner, and Lisa Balduchi, Workers' Compensation Coordinator and Occupational Health Nurse. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 30, 2007, as a full-time welder. Prior to his hire the claimant completed a Pework Screen: Medical History on July 18, 2007. The claimant was asked, "Have you had any surgeries or operations of any kind"? The claimant indicated the type of surgery as rotater cup (sic). The claimant also had surgery for a hernia in 2006, and was released to return to work without restrictions after the hernia was repaired. He chose not to list it on the Pework Screen: Medical History because he thought it was not what the employer was interested in hearing about. The claimant listed what he thought was the more important surgery. The claimant signed the bottom of the form which certified the information was correct under penalty of possible termination of benefits should an injury occur. On the same day the claimant completed a Job Placement Medical History Questionnaire. The claimant answered that he did not have a hernia. After the claimant completed the Pework Screen: Medical History and the Job Placement Medical History Questionnaire, he had a pre-work physical examination.

The claimant was hired and placed in a position that required lifting at least 25 percent of the time. On March 18, 2011, the claimant reported a work-related injury resulting in a re-rupture of the previous hernia. The claimant had surgery on April 18, 2011. The employer was liable for all medical bills. In early May 2011, the employer learned of the claimant's prior hernia and failure to list the hernia on his Prewrite Screen: Medical History. On May 5, 2011, the employer terminated the claimant for falsification of records. The employer would have hired the claimant had he listed the previous condition and surgery.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

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.

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

Misconduct serious enough to warrant a discharge is not necessarily serious enough to warrant a denial of unemployment benefits. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). In the present case, the employer must prove that the Prewrite Screen: Medical History was an application for hire. The employer has not proven that the Prewrite Screen: Medical History was an application for hire. In addition, the claimant's answers did not change the claimant's hiring conditions and, therefore, caused no harm. The employer has failed to prove the claimant was discharged for misconduct. Benefits are allowed.

DECISION:

The representative's June 6, 2011 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs