

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY JOHNSON
Claimant

APPEAL NO. 07A-UI-06310-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEMIN INDUSTRIES INC
Employer

OC: 05-27-07 R: 02
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 13, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 30, 2007. The claimant did participate. The employer did participate through Jeff Clark, Plant Manager; Lisa Mullan, Director of Human Resources; Kristi Krafka, Director of Intellectual Property and Regulatory Affairs for Kemin North America; Matt Newhouse, Quality Assurance Auditor; and Thomas Carrington, Dry Lineman and was represented by Elizabeth Nelson, Attorney at Law. Employer's Exhibits One through Twenty-two were entered and received into the record. Claimant's Exhibits A through J were entered and received into the record.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a production manager full time beginning October 20, 1997 through May 29, 2007 when he was discharged.

The claimant was discharged when an internal audit revealed that he had falsified documents by signing off on them indicating that they were accurate without performing a review to insure that they were indeed accurate.

The employer is a food and additive manufacture that is required to comply with Federal Food and Drug regulations concerning the quality of their products. As part of their compliance procedures the claimant, as a supervisor of the production line workers, was required to review and sign off on forms indicating that certain products had been sent through a metal detector prior to being shipped to customers. The claimant was merely signing off on the forms (examples of which can be found at Employer's Exhibits Eight and Nine) indicating that the metal detection tests had been performed. While the claimant was on vacation in late May, a random audit revealed the discrepancy in the forms the claimant was signing leading the plant manager, Jeff Clark, to perform further investigation.

Mr. Clark learned that the metal detector in one of the packaging rooms had not been operational for almost three months and that products packaged in that room had not been screened through a metal detector. If the FDA had performed an inspection, which is their right, the employer's business could have been closed down. Even worse is the possibility that product shipped to customers which is destined to be added to food for human consumption as a food supplement, could contain metal that could end up in the customers' product and eventually in a consumer's home. The employer faces possible liability if such did occur.

The claimant was to spend approximately 60 percent of his time on the production floor and it was his responsibility to insure that the metal detector was operating as it should. Two employees, Sean Seiger and Thomas Carrington reported to Mr. Clark that they had informed the claimant that the metal detector was not operating correctly. Both indicated that the claimant told them just to get the production done. On the day Mr. Clark began his investigation he discovered immediately that the metal detector was malfunctioning and had been unplugged and was not being used by the line workers. By contacting the maintenance department, Mr. Clark was able to have the detector repaired and operational in a matter of hours. Mr. Clark did nothing that the claimant himself could not have done.

The claimant admits that he was to review forms to insure their accuracy both to comply with FDA regulations and to comply with internal company policies. The claimant did not check the forms to insure that they were accurately filled out. The claimant could have checked the forms against the 'hot list' from the internal Movex system or other company documents to insure that procedures were being followed. The claimant admits that he merely signed the forms instead of actually reviewing them. While the claimant denies being told that the metal detector was malfunctioning, his primary responsibility was to be on the production floor and the fact that the machine was not being used should have been clearly visible to him. It was part of the claimant's responsibilities to make sure that the machines were operating correctly and being utilized properly and he was to follow through to insure that resolution of any problems was achieved.

The claimant had been previously disciplined in April 2006 for failure to accurately fill out company forms, in this case the master sanitation list. The claimant had been put on notice that it was imperative that he fill out forms correctly in order to insure FDA compliance, and compliance with internal guidelines.

The claimant admitted that he just signed and filed the forms and that it was quite likely that he had not verified that the forms were accurate because he had too much work to do. The claimant did not ask his supervisor for any assistance or a change in job duties because he had too much to do. Nor did the claimant notify his supervisor that he was merely signing off on the forms without reviewing them.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

The claimant knew or should have known the importance of accurately verifying the forms he was signing. The claimant had been warned previously about incorrectly signing company documents. The claimant by signing off on the metal detection logs falsified company documents. The claimant knew that those documents were needed to both comply with FDA regulations as well as internal company policies. By failing to verify the forms, metal detection was not performed on some products, which could expose the employer to liability if a problem were discovered with the product. The employer could also face problems with the FDA that could impact their business. The claimant's actions constitute sufficient misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The June 13, 2007, reference 01 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has

worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css