

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLIFFORD R BALDWIN
Claimant

APPEAL NO. 13A-UI-06443-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCED DRAINAGE SYSTEMS INC
Employer

OC: 10/21/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated May 23, 2013, reference 01, which denied unemployment insurance benefits finding that the claimant was discharged from work for failing to following instructions in the performance of his job. After due notice was provided, a telephone hearing was held on July 8, 2013. Claimant participated. The employer participated by Mr. Mitch Kirkland, Plant Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Clifford Baldwin was employed by Advanced Drainage Systems, Inc. from May 28, 2009 until April 23, 2013 when he was discharged from employment. Mr. Baldwin was employed as a full-time line operator/quality assurance worker and was paid by the hour. His immediate supervisor was Dan Griffin.

Mr. Baldwin was discharged based upon his repetitive failure to follow specific work instructions given to him by his supervisor and the plant manager.

As part of the claimant's quality control duties Mr. Baldwin was required to periodically physically measure 12-inch sections of the corrugated plastic pipe that was being produced by the company so that an exact length of sample could be used to determine the pipe was being produced at the correct weight and associated structural features. Company employees, including Mr. Baldwin, were specifically instructed to measure a 12-inch section of pipe to mark it and cut it at exactly 12 inches for testing.

On April 16, Mr. Baldwin had been personally warned by the plant manager about the exact 12-inch length of pipe that needed to be cut and the requirement that it be a measured

12 inches. The claimant was instructed not to count the number of corrugations as that method did not provide a uniform sample for quality assurance testing.

Although Mr. Baldwin was warned about the requirement in the past and had been specifically warned by the plant manager on April 16, on April 22 Mr. Kirkland, the plant manager, noted that Mr. Baldwin was again counting corrugated sections for testing instead of following the required procedure. When Mr. Kirkland inquired as to why the claimant was not following the required procedure after being warned, Mr. Baldwin stated that he was "too busy that day." Production workers are instructed to bring any issues about production testing or their ability to keep up with the production to the attention of their supervisors or the production manager so that adjustments can be made to allow the employee to fully perform the duties of his or her job. Because the claimant had not complained to management that he was unable to perform the duties of his job that night and had failed to follow the required procedure after being specially warned, a decision was made to terminate Mr. Baldwin from his employment.

It is the claimant's position that he was too busy on the night in question to follow the required procedure. It is the claimant's further position that he believed that company requirements allowed 17¾ corrugations or 12 inches in length to be used for testing.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct in connection with the employment. It does.

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. App. 1992).

The evidence in the record establishes that the company had a set and required procedure for taking samples of corrugated pipe for quality assurance testing. The procedure did not allow employees to substitute a number of corrugated sections in lieu of the physical act of measuring with a ruler a 12-inch section of pipe to be tested.

The evidence establishes that Mr. Baldwin had been warned about his failure to follow the required procedure in the past and that the claimant had been specifically warned by the plant manager only a few days before the final incident that caused his discharge.

Reasonable alternatives were available to Mr. Baldwin on the night in question, however, the claimant chose not to seek assistance in the performance of his duties or to inform his supervisor or the production manager of his inability to follow the required procedures. The claimant instead once again substituted the unacceptable method of counting corrugations instead of measuring the pipe by ruler. This conduct was in willful disregard of the specific reasonable and work-related directives that he had been given by his employer and constituted intentional misconduct in connection with the work. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated May 23, 2013, reference 01, 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

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