

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS W NELSON
Claimant

APPEAL NO. 11A-UI-12534-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

**OC: 08/28/11
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Thomas Nelson, filed an appeal from a decision dated September 20, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 17, 2011. The claimant participated on his own behalf. The employer, TPI Iowa, participated by Labor Coordinator Danielle Williams.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Thomas Nelson was employed by TPI from May 3, 2010 until August 30, 2011 as a full-time production worker on the 9:00 p.m. to 5:00 a.m. shift. On the shift which began August 29, 2011, the claimant told his lead worker, Dan Gallagher, he had hurt his back during the weekend while doing PT at his military duty. He asked to do lighter duty, which it was within the authority of the supervisor to grant, but Mr. Gallagher refused. He was told to “de-bag the mold” which was heavy work and he said he could not work at that heavy a job.

Shift Supervisor Chad Cheek was summoned and told the claimant to do the work or go home. The claimant said he could not do the work and was sent home and told to call the human resources department the next morning. He did so and talked with Emily McMann who told him he was discharged for insubordination.

REASONING AND CONCLUSIONS OF LAW:

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the claimant has asserted the supervisor had informally accommodated his duty requests even without a doctor's note imposing restrictions. There was no rebuttal given to this testimony and the employer did not provide any evidence from the lead worker or the shift supervisor about the reasons for refusing Mr. Nelson's request on this occasion.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's explanation of the events. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of September 20, 2011, reference 01, is reversed. Thomas Nelson is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs