

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC A DALABA**  
Claimant

**APPEAL NO. 12A-UI-14110-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURKE MARKETING CORP**  
Employer

**OC: 10/28/12**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Eric Dalaba, filed an appeal from a decision dated November 19, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on January 2, 2013. The claimant participated on his own behalf. The employer, Burke Marketing Corp, participated by Human Resources Shellie Siebert.

**ISSUE:**

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

**FINDINGS OF FACT:**

Eric Dalaba was employed by Burke Marketing Corp from December 12, 1995 until October 29, 2012 as a full-time maintenance technician. Every year the maintenance staff trains in safety procedures. One of the most important is the “lock-out/tag-out” procedure. This requires any maintenance person working on a machine which is powered by electricity to shut off the power and then lock it in the “off” position. A tag is placed on the log with the individual technician’s picture on it to inform others that only that particular technician may unlock the power supply.

This safety procedure is of extreme importance to the employer. The machines on which the technicians work could cause serious injury or death if they were to start operating while the person had their arm inside. The policy is that two violations of the lock-out/tag-out procedure in a 36-month period is grounds for immediate discharge.

Mr. Dalaba had received a written warning for violation of the lock-out/tag-out procedure on November 13, 2009. He was found to have violated it on October 20, 2012 and was discharged on October 29, 2012, after the investigation and review was concluded.

**REASONING AND CONCLUSIONS OF LAW:**

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 claimant had been advised his job was in jeopardy as a result of his failure to follow the required safety procedures. The employer has a very serious interest in enforcing this policy to avoid serious injury or death of its employees. Mr. Dalaba's failure to obey the safety rules is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of November 19, 2012, reference 01, is affirmed. Eric Dalaba is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs