

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD E MYERS

Claimant

APPEAL NO. 11A-UI-08887-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DENISE CARNAHAN

T & K ROOFING CO INC

Employer

OC: 11-28-10

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 23, 2011, reference 05, decision that denied benefits. After due notice was issued, a hearing was held on July 28, 2011. The claimant did participate. The employer did not participate.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a roofer's apprentice full time beginning October 25, 2010 through May 29, 2011 when he was discharged. On May 29 the claimant's foreman told him he needed to get something that was outside the roped off area. The claimant knew that he was going to be outside the roped off area, that he was required to be tied off to comply with OSHA regulations and to comply with the employer's safety rules. At hearing the claimant admitted that his supervisor did not tell him to violate the rules about tying off, but that he just stepped out of the roped off area for a second. The claimant was seen by one of John Deere's safety generals who reported him to his employer. By stepping out of the roped off area without tying off the claimant endangered his safety.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It is not unreasonable for an employer to expect employees to follow safety rules at all times. By failing to follow the safety rules the claimant jeopardized his own safety and risked his employer garnering a citation from Iowa OSHA. Had the claimant fallen his employer's workers compensation carrier would have been responsible for covering the costs of his injury. The claimant's failure to follow such a serious safety rule as tying off before stepping outside of the safe zone is conduct not in the employer's best interest and rises to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The June 23, 2011 (reference 05) 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