

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICHEAL L ALLIE
Claimant

VAN DIEST SUPPLY CO
Employer

APPEAL 15A-UI-03810-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/01/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 20, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. Telephone hearings were held on April 29, and June 2, 2015. The claimant participated through Ryan Beattie, attorney at law. The employer participated through Christine Bestor Townsend, attorney at law. Employer witnesses were Carolyn Cross, Lee Trask, Kevin Spencer, and Antonio McClain. Employer Exhibits One through Eight were admitted. Claimant exhibit A was also admitted.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a night leader and was separated from employment on March 2, 2015, when he was discharged for violating the employer's lock out/tag out procedures.

Under the employer's personnel policies and procedures, employees are made aware that the employer has discretion to move to immediate termination for some offenses. The policy references both insubordination and the violation of safety policies as examples of behaviors that may lead to immediate dismissal (Employer Exhibit One). The claimant was made aware of the employer's policies and acknowledged receipt and understanding of the contained policies at the time of hire (Employer Exhibit Two). The employer has established lock out/tag out procedures with respect to its equipment on site, including kneaders and extruders. A copy of the procedures is available to employees on site as well (Employer Exhibits Three and Eight).

The final incident occurred on February 27, 2015, when the claimant was observed, by Nancy Bell, operating the kneader with the doors open. Ms. Bell identified and removed washers that had been placed on the magnetic sensors which allowed the claimant to bypass the lock out/tag out procedure and operate with the kneader on, and with the doors open (Employer Exhibit

Four). When questioned by the employer about the washers, the claimant stated his peer mentor, Tracy Mallison, taught him to use the washers so he did not have to stop, and complete the lock out/tag out procedure. The incentive for bypassing protocol was efficiency. The claimant was subsequently discharged for operating the kneader in violation of the lock out/tag out protocol (Employer Exhibit Five).

Prior to the final incident, on January 29, 2015, the claimant was verbally counseled by Nancy Bell and separately by Antonio McClain, regarding the following of directives and policies. This was as a result of Mr. McClain observing the claimant on site as he operated the kneader with washers on the sensors. Ms. Bell also witnessed the claimant using the washers and verbally counseled him that he was not to use washers and to follow protocol. Neither Ms. Bell nor Mr. McClain witnessed any other employee using washers on the kneader when onsite. Mr. McClain documented his conversation with the claimant in an internal memo (Employer Exhibit Six). The claimant also then received a letter of reprimand from Kevin Spencer advising him he needed to follow direction and follow policies immediately on February 2, 2015 (Employer Exhibit Seven).

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In this case, the claimant was discharged for violating the employer's lock out/tag out procedure when operating a kneader. The employer offered credible testimony that the claimant had repeatedly disregarded the employer's directives about established policies and procedures (employer exhibits six and seven) beyond the lock out/tag out protocol incident that occurred on February 27, 2015. Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The uncontroverted evidence is that the claimant did place washers on the magnetic sensors to bypass the lock out/tag out procedure and to continue mixing the contents contained within the kneader. So, at issue is not whether the claimant did in fact bypass the protocol, but rather whether his actions amounted to misconduct under the circumstances. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa App. 1985).

The employer is charged under both federal and state law with providing its employees a safe working environment; furthermore, it is in employer's best financial interest to avoid employee injuries. Even though neither the claimant nor employees were hurt, the employer's lock out/tag out policy was implemented for the safety of both the claimant and fellow employees. By ignoring the established policy, the claimant would save four to seven minutes in time while mixing the contents in the kneader. In the absence of following lock out/tag out, an employee could be severely injured and possibly lose a limb. The administrative law judge concludes that the employer's request and directive to follow the lock out/tag out procedure was reasonable.

The next consideration is why the claimant was non-compliant in following the established lock out/tag out procedures on February 27, 2015. The claimant's argument that he was only following his peer mentor's instructions is unpersuasive as credible evidence was presented by both Mr. McClain and Ms. Bell that the proper use of the kneader was discussed by each of them with the claimant prior to the final incident. Even if the claimant had been assured by a peer mentor that he could use washers on the sensors, as members of management, Mr. McClain's and Ms. Bell's directives would supersede that of the claimant's peer. Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). The claimant made the decision to violate the employer's safety policy after being directed by Ms. Bell and Mr. McClain not to use washers to bypass the lock out/tag out protocol. Given claimant's February 2nd letter of reprimand about following directions and the verbal directives of two managers, his deliberate disregard for his personal safety, employer's safety policy, and management's specific instruction constitutes disqualifying misconduct. Benefits are denied.

DECISION:

The March 20, 2015, (reference 01) unemployment insurance 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs