

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY D TIETGE
Claimant

APPEAL NO. 09A-UI-02831-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

METAL MONSTERS INC
Employer

OC: 07/13/08
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 18, 2009, reference 04, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 18, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Michael Kramer participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a laborer from November 10, 2008, to January 6, 2009. In mid-December 2008, the claimant had completed some snow removal work. He understood that he was free to leave until there was work available again. He missed a call from the secretary asking him to come back in and the secretary did not leave a message for him. Later, he was warned about not answering his cell phone.

On January 4, 2009, the claimant was called in to do snow removal. The conditions were very icy. The claimant was slipping on the ice while he was working. He observed another employee who he thought was going too fast. He commented to the employee to slow down “we’re getting paid by the hour.” His comment was because he was concerned about the employee getting injured on the ice when the job did provide any insurance benefits. It was not meant as a comment about dragging out the work or sloughing off.

When the employee reported what the claimant said to the owner, Michael Kramer, Kramer discharged the claimant on January 6, 2009.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. I believe the claimant's testimony that he did not intend the comment to the coworker to mean he should drag out the work.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated February 18, 2009, reference 04, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css