

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PATRICK DICUS
Claimant

ACP OF DELEWARE INC
Employer

APPEAL NO. 14A-UI-01848-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/19/14
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Patrick Dicus (claimant) appealed an unemployment insurance decision dated February 12, 2014, (reference 01), which held that he was not eligible for unemployment insurance benefits because he was discharged from ACP of Delaware, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 27, 2014. The claimant participated in the hearing. The employer participated through Kim Port, Human Resources Director.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant most recently worked as a full-time manufacturing specialist material handler and was employed from June 16, 2008, through January 24, 2014, when he was discharged for continued insubordinate conduct. The claimant received verbal counselings and warnings for wasting time and not doing work as directed, as well as chit chatting with co-employees and avoiding his supervisor. Employees were advised on January 23, 2014, that they would probably need to work overtime the next two Fridays but that a decision would be made at the end of the day. Near the end of his shift, he could not be contacted and tried to punch out before his supervisor could talk to him. The claimant was not receptive to working overtime but was told he needed to come in on January 24, 2014. He did report to work on Friday but was wearing inappropriate shoes even though he had been specifically warned the shoes were not acceptable.

The employer's Personal Protective Equipment policy prohibits employees from wearing open-toed or open-backed shoes and the employer reviewed this policy with employees in September 2013. The employer issued the claimant a documented verbal warning on December 18, 2013, for not wearing acceptable shoes. He was wearing a pair of Crocs, which

are plastic shoes with numerous holes in the top part of the shoe. The employer specifically advised him that he could not wear those shoes. The claimant wore them on January 24, 2014, but had put tape over the shoes stating that he believed that made them acceptable.

The claimant had received three previous warnings for failing to count parts before sending the box to a third party company. He had been instructed to count the parts but opted to just send the whole box instead, which resulted in recalls, inventory issues and an incorrect number of parts sent. The claimant was also asked to put some kits away and to consolidate each bin but did not consolidate one item. The employer had given the claimant several opportunities to correct his behavior but discharged him when he failed to do so.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged on January 24, 2014 for insubordination by repeatedly failing to follow directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant had been warned but did not improve his behavior. His insubordination shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated February 12, 2014, (reference 01), is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs