

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACOB KUTSCH
Claimant

APPEAL NO: 13A-UI-00486-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADDOCO INC
Employer

OC: 12/16/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 9, 2013, reference 01, that held he was discharged for misconduct on December 17, 2012, and benefits are denied. A telephone hearing was held on February 13, 2013. The claimant participated. Steve Rodham, President, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on May 13, 2005, and last worked for the employer as a full-time pallet repairer on December 17, 2012. After the employer denied claimant's request for a pay raise, he used a company spray gun to print the words "over worked and underpaid" on cardboard. He placed the sign on a stack of lumber in building #2 where it could be observed by other employees.

The employer discharged claimant for insubordination and willful destruction of company property that are violations of company policy for posting the sign. Claimant made the sign as a form of protest and he does not believe he did anything wrong.

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 administrative law judge concludes the employer has established claimant was discharged for misconduct in connection with employment on December 17, 2012. Claimant's conduct on December 17 was not an isolated incident of poor judgment because it was not just an individual act of protest but intended to cause disharmony among the workforce.

The claimant's protest is insubordinate behavior because it was in response to an employer pay raise denial and posted where it could be observed by other employees. In effect claimant is refusing to accept the employer pay raise denial and attempting to cause dissension among employees by posting it where it could be seen by the workforce. His use of company equipment, material and time is incidental to his unacceptable behavior but it does violate company policy. Job disqualifying misconduct is established.

DECISION:

The department decision dated January 9, 2013, reference 01, is affirmed. The claimant was discharged for misconduct on December 17, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css