

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY J JONES
Claimant

APPEAL NO. 14A-UI-00616-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCED DRAINAGE SYSTEMS INC
Employer

OC: 12/01/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated January 7, 2014, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on February 10, 2014, by telephone conference call. The claimant participated personally. Employer participated by Josh Amundson, wash line supervisor first shift. The record consists of the testimony of Josh Amundson; the testimony of Terry Jones; and Employer's Exhibits 1-25.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer has a manufacturing facility located in Waterloo, Iowa, known as Greenline Polymers. The claimant was hired on February 7, 2011, as a full-time wash line operator. His last day of work was November 24, 2013. He was terminated on December 3, 2013.

The incident that led to the claimant's termination occurred on November 24, 2013. The claimant and his co-workers reached a point where there was no more material to run. The employer told the employees that they could leave provided everything was cleaned before leaving. The employer has a pit in its manufacturing area that collects waste water. The claimant was responsible for making sure the wash line was properly shut down and the area was cleaned after shutdown. This included the pit. The claimant cleaned everything and left. After the claimant left, some water came back up from the pit and resulted in the pit being full of water. The employer concluded that the claimant had failed to perform his job duties before going home and given his poor attitude, decided to terminate him.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes unsatisfactory job performance. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The greater weight of the evidence in this case is that the claimant cleaned up his area before leaving and that the problem with the pit water occurred after the claimant left. The claimant can hardly be responsible for something that occurs after he leaves for the day. Even if the claimant did not perform his job to his employer's satisfaction, misconduct is not established since poor job performance is not disqualifying misconduct. The employer can make a business decision that an employee is not performing his job properly and terminate him. But this business decision does not disqualify a claimant from receiving unemployment insurance benefits. Since the employer has not shown misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated January 7, 2014, reference 01, is affirmed. Unemployment insurance benefits are allowed if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs