

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DWAYNE M GIVENS

Claimant

APPEAL NO. 11A-UI-02719-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILSON TRAILER COMPANY

Employer

OC: 01/23/11

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Dwayne Givens (claimant) appealed a representative's March 2, 2011 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Wilson Trailer Company (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 30, 2011. The claimant participated personally and through J.B. Garth, a former co-worker. The employer was represented by Paul Deck, Attorney at Law, and participated by John Kreber, Director of Human Resources; R.J. Stowe, Supervisor; and Doug Mascell, General Supervisor. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 22, 2008, as a full-time welder. The employer had a handbook but the claimant could not remember receiving it. Workers are supposed to remain at the line until the light turns off even if there is no work to be done. Between five and ten people leave the line during this period and no one has been reprimanded for leaving. The employer issued the claimant written warnings on February 26, and September 28, 2010, for failure to follow instructions.

On January 24, 2011, the Supervisor saw the claimant out of his work area nine minutes prior to the start of his lunch break. The claimant was in the tool crib with two workers who worked in that location. The other two workers were warming up food for lunch while the light was still on. The claimant placed his food in the microwave but did not start the microwave. The claimant was issued a three-day suspension. On January 28, 2011, the employer terminated the claimant. The two workers who warmed up their food were not disciplined.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provided sufficient evidence of job-related misconduct. Other workers were disobeying the same rules with no repercussions. Five to ten people per day leave the line without reprimand. Two workers in the room with the claimant were warming their food but they received no disciplinary action. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 2, 2011 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css