

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ULMER E BELL
Claimant

APPEAL NO: 11A-UI-03101-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BE & K CONSTRUCTION COMPANY
Employer

OC: 02/06/11
Claimant: Appellant (1)

Iowa Code § 96.5-(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 4, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing with his attorney, James Pillars. Megan Long represented the employer. Tom Zuidema, the superintendant, Andy Richmond, a supervisor, and Joe Giveans, a senior project manager, appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in April 2007. He worked as a full-time welder. His supervisor was Andy Richmond.

On February 4, 2011, the claimant had finished a job and was standing by a table waiting for another job to do. Richmond was trying to finish a job that required him to cut some pipe. Richmond asked the claimant to get a port-a-band blade he needed to cut some pipe. After the claimant told Richmond the employer did not have this blade, Richmond asked him to get a requisition form so he could get a replacement blade. The claimant became frustrated after Richmond asked him to get a requisition form. In frustration, the claimant tossed a piece of pipe on the floor and swore at Richmond. After Richmond told him to go to the office, the claimant again swore at Richmond. While the claimant had a problem working with another supervisor, he had not had any previous problems working with Richmond.

Zuidema talked to the claimant in the office. The claimant acknowledged Richmond had not yelled at him and had even asked him to please get the requisition form. The claimant explained that he became upset at the way Richmond talked to him. The claimant admitted he

swore at Richmond. The employer discharged the claimant for insubordination, Employer Exhibit One, and for throwing the piece of pipe.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts establish the claimant had finished a job and was not doing any job when Richmond asked him to get a blade Richmond needed to finish a job. Even if the claimant did not know where a requisition form was at or how to get one, he threw a piece of pipe on the floor in frustration at this request instead of asking Richmond where the requisition form was at or who he needed to get the form from. The claimant's conduct – throwing a piece of pipe in frustration and then swearing at Richmond amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. In this case, the claimant's reaction was unprovoked. Richmond did not yell at him and even asked him to please get a requisition form. Even though the claimant had not acted this way before with Richmond, his conduct on February 4 amounts to work-connected misconduct. Therefore, as of February 6, 2011, the claimant is not qualified to receive benefits.

DECISION:

The representative's March 4, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for work-connected misconduct that the claimant committed on February 4, 2011. The claimant is disqualified from receiving unemployment insurance benefits as of February 6, 2011. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css