

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROY FORNEY
Claimant

APPEAL NO: 10A-UI-08486-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

POWER ENGINEERING & MFG LTD
Employer

OC: 05/02/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Roy Forney (claimant) appealed an unemployment insurance decision dated June 7, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Power Engineering & Manufacturing, Ltd. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 2, 2010. The claimant participated in the hearing. The employer participated through John Warren, President and Kevin Karns, Director of Support Services and Human Resources Coordinator. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

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 employed as a full-time assembler from May 26, 2005 through May 6, 2010 when he was discharged for insubordination. The employer revised its handbook and had a meeting with its employees on April 26, 2010 to discuss all the changes. Six documents were attached to the new handbook and employees were told to review the material but to have the documents signed by May 6, 2010. The documents included were the handbook acknowledgement, the classification agreement, the network user agreement, the communication and privacy agreement, the non-disclosure agreement, and the non-compete agreement. The non-disclosure agreement discussed patents and processes within the company, and with regard to the non-compete agreement, the employer specifically advised its employees that there were no competitors within the state of Iowa.

The claimant refused to sign the documents and the employer met with him on May 6, 2010. He testified at the hearing that it was only the non-compete agreement that he refused to sign but in fact, he did not sign any of the documents. The employer told the claimant he would be

terminated if he refused to sign the documents but the claimant chose not to do so anyway and was discharged.

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 the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on May 6, 2010 for insubordination after he refused to sign six new policy documents. He knew he would lose his job if he failed to sign the documents but elected not to do so anyway because he thought the employer was trying to push him into a corner. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa App. 1985). The claimant intentionally and substantially disregarded the standard of behavior the

employer had a right to expect from him. 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 June 7, 2010, 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/css