

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRENTON E LILES

Claimant

MUSCO SPORTS LIGHTING LLC

Employer

APPEAL NO: 10A-UI-07460-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/25/10

Claimant: Appellant (2)

Section 96.5-2-a - Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department decision dated May 18, 2010, reference 01, that held he was discharged for misconduct on April 26, 2010, and benefits are denied. A telephone hearing was held on July 14, 2010. The claimant participated. Cassie Barber, HR Representative, 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 12, 2008, and last worked for the employer as a full-time welder on April 26, 2010. The claimant received a written warning on August 17, 2009 for failing to report a co-worker for drinking on the job.

Sometime in April 2010, the employer discovered fire-crackers in a work area and it began an investigation. The employer concluded its investigation by discharging the claimant and three other employees on April 26 for their involvement in the fire-cracker incident. The claimant discovered the fire-crackers, reported it to his lead person, and was told to leave them alone. The claimant left work and he had nothing more to do with the situation. The employer discharged claimant because of the August warning and his association with the recent incident. HR Manager Pence who discharged the claimant and other workers is no longer an employee, and Representative Barber does not have personal knowledge about this matter.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on April 26, 2010.

The employer witness could not establish a date when claimant was alleged to be involved in the fire-cracker incident, and she did not have personal knowledge to refute claimant that his only involvement was reporting the presence of the fire-crackers to his lead person. Job disqualifying misconduct is not established in this recent incident.

DECISION:

The department decision dated May 18, 2010, reference 01, is reversed. The claimant was not discharged for a current act of misconduct on April 26, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css