

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT FAITH
Claimant

APPEAL NO. 13A-UI-12145-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VALERO SERVICES INC
Employer

**OC: 09/29/13
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Valero Services, Inc. (employer) appealed an unemployment insurance decision dated October 22, 2013, reference 01, which held that Scott Faith (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 13, 2013. The claimant participated in the hearing with former supervisor, Lynn Johnson. The employer participated through Bob Abbott, Human Resources Director; Sara Edwards, Lead Human Resources Specialist; and Marsha Gibson, Employer Representatives. Employer's Exhibits One through Six were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer operates ethanol plants. The claimant was employed as a full-time process operator from March 7, 2011 through October 2, 2013 when he was discharged for violating two lifesaving safety policies. He had previously received a final warning on September 25, 2012 after he threw a 35 pound PSV down 40 feet to the ground even though it was dark and he had been unable to determine if the area was clear. On September 27, 2013, there was a problem with a blockage in a flour conveyor. The claimant helped remove the conveyor lid without first obtaining a Safe Work Permit and without locking out the conveyor. These are two mandatory safety steps required before working on any machines.

The claimant denied actually lifting the lid and testified it was lifted while he was away from it. He also contends there was a Safe Work Permit prepared. His former supervisor was discharged from the same incident and he testified the claimant was not directly involved. The employer relied on hearsay documentary evidence but did not provide any first hand witnesses.

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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on October 2, 2013 for violation of two lifesaving safety policies. He denies actual involvement in lifting the conveyor lid and was actually working with his supervisor at the time, who should have obtained the Safe Work Permit. The employer contends the claimant was personally involved but the employer relied on documentary evidence. The employer's hearsay testimony that the claimant was involved in lifting the conveyor lid does not overcome the claimant's and his former supervisor's credible, sworn testimony to the contrary. The employer has not met its burden. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated October 22, 2013, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css