

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RENE KUONEN
Claimant

APPEAL NO. 09A-UI-16119-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLMAN DYNAMICS INC
Employer

**Original Claim: 10/04/09
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Rene Kuonen (claimant) appealed an unemployment insurance decision dated October 21, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Wellman Dynamics, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 2, 2009. The claimant participated in the hearing. The employer participated through Amy Reed, Human Resources Supervisor. 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 having considered all of the evidence in the record, finds that: The claimant was employed as a full-time maintenance employee from January 6, 2009 through September 30, 2009 when he was discharged for violation of contract. The employer's employment contract provides that employees will be discharged if they receive four written warnings within a twelve-month period, and the claimant was aware of this fact. He was discharged after receiving four written warnings within a four-month period.

The claimant received his first warning on June 8, 2009 for smoking outside of break time in a non-designated area. Employees are provided specific areas where they can smoke and they are only allowed to smoke while on their scheduled break. A second warning was issued to the claimant on July 16, 2009 for a safety infraction when he was standing on the very top step of a ladder. The third warning was for an improper lock-out/tag-out on July 21, 2009, but the warning was designated as carelessness in workmanship and/or failure to perform duties as assigned. The final incident and fourth written warning was issued on September 9, 2009 for his second violation of smoking outside of break time and in an unauthorized area.

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 per company policy after he received four disciplinary warnings within four months. He was aware of the rules but does not feel the smoking policy was evenly and fairly enforced. The office staff and management do not take scheduled breaks and that may be why the claimant does not believe the smoking policy is evenly enforced. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. 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 October 21, 2009, 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/kjw