

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY A HOPP

Claimant

APPEAL NO. 07A-UI-01537-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NATURAL MATERIALS

Employer

**OC: 12/31/06 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Gary Hopp (claimant) appealed a representative's February 6, 2007 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Natural Materials (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 27, 2007. The claimant participated personally. The employer participated by Debbie Golden, Human Resources Manager, Gary Daane, General Manager.

ISSUE:

The issue is whether the claimant was discharged for 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 hired on February 28, 2006, as a full-time sales manager. The claimant was a previous owner of the company. While the claimant owned the company the claimant's minor children were present at the work site and had operated some large equipment. They grew up operating the equipment. In June 2006, the general manager told the claimant that he could not allow the claimant's children to operate heavy equipment at the work site.

Later the claimant was at the work site with the children when the owner of the company allowed the claimant's children to operate some heavy equipment. On December 20, 2006, the employer received a letter from the claimant's wife divorce attorney. The letter informed the employer that the children should not be operating the equipment.

On January 2, 2007, the claimant's work on the site was complete. The employer told the claimant that the employment relationship was not working out and the claimant was discharged from work. The employer did not inform the claimant he was terminated for allowing his children to operate the equipment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred in June 2006. The only other incident of the children on the equipment was condoned by the company's owner. The claimant was not discharged until January 2, 2007. While the administrative law judge recognizes that minor children should not be operating heavy machinery, the owner of the company told the claimant it was acceptable. The employer cannot on one hand be indignant about the claimant's actions and on the other hand giving permission for those same actions to occur. The employer has failed to provide any evidence of willful and

deliberate misconduct, which was the final incident leading to the discharge, and disqualification may not be imposed.

DECISION:

The representative's February 6, 2007 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw