

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID C O'BRIEN
Claimant

APPEAL NO: 14A-UI-06117-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BENNETT MACHINE & FABRICATING INC
Employer

**OC: 07/21/13
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 2, 2014, reference 01, that held he was discharged for misconduct on May 13, 2014, and benefits are denied. A telephone hearing was held on July 8, 2014. The claimant, and Dale Walters, Teamster Local #238 Union Business representative, participated. Laura Scharosch, HR manager, Michael French, Production supervisor, Dale Wiese, Production manager, and Roy Crawley, GM, participated for the employer. Employer Exhibits 1-6 were received as evidence.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on July 9, 2008, and last worked for the employer as a full-time machine operator on May 13, 2014. Claimant's employment is covered by a collective bargaining agreement (CBA) with Teamsters Local #238.

The CBA has a progressive disciplinary procedure from verbal to written warning to written suspension and discharge. It allows for a one-half hour lunch break, and the employer authorizes short breaks of five to seven minutes at 9:30 a.m. and 1:30 p.m. for smoking and other reasons.

The employer issued to claimant verbal (February 11, 2014), written (May 2), and written suspension (May 7) discipline for taking excessive break time. Claimant refused to sign for the receipt of these disciplines. When claimant returned to work on May 13, he was observed taking excessive break time and discharged. Claimant refused to sign for the discharge statement.

Claimant says he has a stomach issue that causes him to take frequent bathroom breaks but he offered no medical evidence to support it. He has filed a grievance that is pending. The employer states that no other employee of the some 48 to 50 machine operators like claimant has been disciplined for taking excessive breaks.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The administrative law judge concludes employer established claimant was discharged for misconduct on May 13, 2014 for excessive breaks and refusing to sign for discipline.

A refusal to sign for written discipline is misconduct as a matter of law. The employer adhered to the CBA by issuing claimant progressive discipline for taking excessive breaks. Claimant did not offer any specific OSHA or other law that he can take an "excessive amount of time" to take a bathroom break. He offered no medical evidence to support it. Job disqualifying misconduct is established.

DECISION:

The department decision dated June 2, 2014, reference 01, is affirmed. The claimant was discharged for misconduct on May 13, 2014. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs