

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TONY HOFFMAN
Claimant

APPEAL NO. 20A-UI-11097-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTIVE THERMAL CONCEPTS INC
Employer

OC: 07/12/20
Claimant: Respondent (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated September 2, 2020, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 30, 2020. Employer participated by Matt Yamilkowski. Claimant failed to respond to the hearing notice and did not participate.

ISSUES:

Whether claimant was discharged for misconduct?

Whether claimant was overpaid benefits?

Whether claimant is eligible for FPUC benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on July 9, 2020. Employer discharged claimant on July 10, 2020 because claimant was not following proper OSHA procedures for the removal of asbestos a day after being warned about not following proper procedures in spite of the fact that claimant was licensed as an asbestos removal supervisor. Additionally, claimant called his supervisor a 'dick' and a 'fucking dick' multiple times when confronted about his lack of procedures. Claimant had also refused to carry heavy items that are needed daily on the job, even though that was listed as a necessary component of his job.

Claimant was an asbestos removal supervisor. To get that job he needed over 40 hours of training and licensure for removal of the highly cancerous product. Claimant's supervisor stated that claimant was found at a job site with none of the proper clothing, or equipment and was seen with 16 different OSHA violations. When employer confronted claimant, he got defensive and started cussing at his supervisor. Employer stated that these actions would not be accepted. The next day, employer found claimant again spreading asbestos throughout the house and yard he was working by not taking off his shoes as he walked around.

Claimant has not received state unemployment benefits in this matter in the amount.

Claimant has not received Federal Pandemic Unemployment Compensation benefits in this matter.

Employer stated that he gave information surrounding the claimant's inability to do his job on the Notice of Claim. He stated he did not receive a phone call from IWD.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning following proper safety measures claimant had been trained to follow. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

The overpayment issue is moot as claimant has not received any benefits.

The issue of employer participation is moot as claimant has not received any benefits.

DECISION:

The decision of the representative dated September 2, 2020, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

November 3, 2020
Decision Dated and Mailed

bab/scn