

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**HARVEY CASTON**  
Claimant

**CG ACQUISITION CO**  
Employer

**APPEAL 19A-UI-07964-CL**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/01/19  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On October 13, 2019, the claimant filed an appeal from the October 3, 2019, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A hearing was held on November 5, 2019, in Waterloo, Iowa. Claimant participated. Employer participated by telephone through human resource manager Bailey Voss. Employer's Exhibits 1 through 3 were received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 7, 2015. Claimant last worked as a full-time tank cleaner lead. Claimant was separated from employment on September 4, 2019, when he was terminated.

Employer has a lock-out/tag-out procedure for cleaning the tanks in which it mixes paint. The procedure requires an employee cleaning a tank to turn off the power source and apply their own personal lock prior to climbing into the tank and cleaning it. Employer also has an Absolute Safety policy that states that employees who violate the lock-out/tag-out procedure will lose their job. Claimant underwent the training for the lock-out/tag-out procedure and Absolute Safety. After the training, employer gave claimant a quiz. Claimant answered the question on whether an employee can work under another employee's lock correctly when he marked "false." If a lock is removed and the power source turned on while an employee is in a tank, it could result in electrocution and death.

Technical manager Jerry Makedonski was responsible for training employees on the lock-out/tag-out procedure and physically assigning locks to employees.

About three months prior to the end of his employment, an employee named Chan Smith was transferred onto claimant's crew. Chan Smith did not have the lock-out/tag-out training and therefore did not have his own lock.

On August 30, 2019, Makedonski conducted a refresher course on lock-out/tag-out procedures.

On September 3, 2019, Makedonski was documenting the training he had given on August 30. He came across the name of Chan Smith, who was not in employer's records as having completed the initial lock-out/tag-out training.

Makedonski asked claimant about Chan Smith. Claimant admitted Smith had been working on his crew for about three months and that claimant let Smith work in a tank under claimant's lock on at least one occasion and that claimant knew it was against company policy.

On September 4, 2019, employer terminated claimant's employment.

Employer never previously disciplined claimant for any safety violations.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, but whether the claimant

is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Here, claimant allowed an employee under his supervision to work in a tank under another person's lock (his own). Although claimant asserts this happened on only one occasion, the employee worked on the crew for three months without his own lock, so it is reasonable to believe it probably happened more than one time. Claimant asserts it was Makedonski, not he, who was responsible for giving that training. That may be true, but claimant could have refused to allow Smith to work in a tank until he was given the training and his own lock. He did not. Claimant's actions were in violation of employer's lock-out/tag-out policy and in deliberate disregard of employer's interest in maintaining a safe workplace. Claimant was aware he could be terminated for just one violation of employer's lock-out/tag-out policy. Claimant's actions do amount to misconduct, even without prior warning.

**DECISION:**

The October 3, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Decision Dated and Mailed

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