

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL D WALKER
Claimant

DTZ INC
Employer

APPEAL 15A-UI-12935-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Michael Walker (claimant) filed an appeal from the November 09, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination DTZ, Inc. (employer) discharged him for dishonesty in connection with his work. The parties were properly notified about the hearing. A telephone hearing was held on December 10, 2015. The claimant participated on his own behalf. The employer participated through Personnel Coordinator Lucinda Paris and Sanitation Supervisor Keith Thompson. Employer's Exhibits 1 and 2 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: The claimant was employed full time as an Industrial Cleaning Technician in Waste Water beginning on September 23, 2004, and was separated from employment on October 22, 2015, when he was discharged. The employer is hosted by Cargill and provides contract work for the Cargill plant. Cargill has a license from the Environmental Protection Agency (EPA) and must follow the guidelines for discharging waste water as outlined by the Department of Natural Resources (DNR). If Cargill discharges waste water that does not conform to the DNR guidelines, it must notify the DNR and could be charged with fines.

One factor Cargill and, in turn, the employer must measure for is the ph level of the waste water. The employer has four employees, the claimant and three others, that are each responsible for calibrating the ph probe each shift that they work. The probe is used to measure the ph level of the waste water samples every hour. If the probe measures 5.0 at the start of the calibration process, the value is documented and no further calibration is needed. If the probe does not measure 5.0, the technician is required to complete a three-step calibration process to try and get a 5.0 reading on the probe. If the probe reaches 5.0, the value is documented and the probe can be used. If the calibration process does not work, the technician is to notify a Cargill employee who can then work on the probe to make sure it is properly calibrated and taking

accurate measurements. Cargill is responsible for reporting the calibration measurements to the DNR as part of the oversight of its waste water disposal practices.

In October 2015, Katie Duncan, Cargill's supervisor in the waste water area, noticed the claimant was recording a 5.0 on his initial readings approximately 95 percent of the time. The other technicians on the other shifts only received a 5.0 on the initial readings about 15 percent of the time. In the week before October 20, 2015, Duncan purposely skewed the probe to test the technicians who were responsible for the calibration. The readings of the other three technicians changed according to Duncan's change on the probe. However, the claimant still recorded 5.0. Duncan reviewed the last six months of the claimant's records and determined over 90 percent of the time he was only recording 5.0 and not following the proper procedure.

On October 20, 2015, Duncan took her concerns and findings to Personnel Coordinator Lucinda Paris, Sanitation Supervisor Keith Thompson, and Onsite Account Manager Richard Hullman. The following day, the group confronted the claimant about the allegation. The claimant acknowledged that he would sometimes just write down 5.0 and not actually calibrate the probe. He argued that was a job duty for the Cargill employees and the technology had changed over his time in his employment. Hullman asked if he had ever asked for additional training and the claimant acknowledged he had not. Hullman explained Cargill wanted the claimant removed from his position and the claimant was discharged for falsifying company documents.

The employer has a disciplinary policy in its employee handbook. The claimant received a copy of the employee handbook shortly after he was hired. According to the policy, falsification of records can result in immediate discharge without previous warning.

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. Benefits are denied.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). Negligence does not constitute 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer maintained a contract with Cargill and both were responsible for maintaining safe water disposal methods to ensure public safety and health. The claimant was responsible for calibrating the instrument used to measure the pH balance of the waste water to ensure it was within the guidelines established to protect the public health and safety. Part of the calibration process included tracking the information to help Cargill, the employer, and DNR ensure that the waste water was being disposed of safely. The employer put the claimant on notice that falsification of documents would result in immediate discharge.

The claimant's argument that the testing should have been done by a Cargill employee is not persuasive as he had a duty to accurately record the information when he was the one completing the test. The claimant acknowledged that sometimes he just wrote down 5.0 and did not perform the calibration test. However, he sometimes correctly performed his job duties which means he was aware of the proper procedure and was capable of accurately performing the job duty. The claimant intentionally failed to accurately perform his job duties on numerous occasions. Additionally, when the claimant falsified the documents, he displayed a deliberate disregard of Cargill and the employer's interest in properly maintaining accurate record which is misconduct without previous warning. Accordingly, benefits are denied.

DECISION:

The November 09, 2015, (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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/css