

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALLEN J HABHAB**  
Claimant

**APPEAL NO. 13A-UI-06892-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BROCK SERVICES LLC**  
Employer

**OC: 05/12/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the representative's decision dated June 7, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a hearing was held on July 15, 2013, by telephone conference call. The claimant participated personally. The employer participated by Anthony Piazza, site safety manager, and Cash Taylor, human resources generalist. The record consists of the testimony of Cash Taylor; the testimony of Anthony Piazza; and the testimony of Allen Habhab.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is engaged in specialty construction. The claimant worked for the employer at the Koch Nitrogen plant located in Duncombe, Iowa. The claimant was a full-time apprentice. His last day of work was May 3, 2013. He was terminated on May 3, 2013.

The incident that led to the claimant's termination occurred on May 2, 2013. The claimant was working outside and his gloves got wet. The claimant placed his gloves on a hot pipe carrying water in order to let the gloves dry out. The gloves melted. The employer considered this to be a serious safety violation as the gloves could have caught fire and caused serious damage to persons and property. The employer has zero tolerance for any safety violation that might lead to combustion.

The claimant had never been warned or disciplined for safety violations in the past. He did not realize that the gloves would melt and potentially lead to a combustion incident.

## REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion or simple acts of negligence in isolated instances. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The parties agree that the claimant left a pair of gloves to dry on a heated pipe. The claimant did not realize that this was a safety violation and could lead to serious consequences if the gloves caught fire. The employer had to prove that the claimant knowingly and deliberately violated a safety rule before a disqualification can be imposed. The evidence showed that the claimant made an error of judgment or discretion in an isolated instance. The claimant has no history of safety violations. Since there is insufficient evidence of misconduct in this record, benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated June 7, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs