

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK H BROWN
Claimant

APPEAL NO. 08A-UI-04946-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VERMEER MANUFACTURING CO INC
Employer

**OC: 04/20/08 R: 02
Claimant: Appellant (2)**

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant, Patrick Brown filed an appeal from a decision dated May 15, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 9, 2008. The claimant participated on his own behalf. The employer, Vermeer, participated by Human Resources Business Partner Cornie Van Walbeek. Exhibits One and A were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Patrick Brown was employed by Vermeer from December 20, 2004 until April 24, 2008, as a full-time machining technician. He received copies of the employee handbook and the "respectful workplace policy" during the course of his employment.

On Monday, April 21, 2008, Human Resources Business Partner Cornie Van Walbeek received a report from the claimant's manager he had been involved in an incident of harassment on Friday, April 18, 2008. The claimant was alleged to have come up behind a female co-worker who was pushing a cart, stood behind her and put his hands on the handles of the cart on either side of her. He was alleged to have said, "Do you want me to push from behind?" then laughed and walked off. The group leader spoke with Mr. Brown that night and told him he had received a report from the female co-worker about the incident.

Mr. Van Walbeek interviewed the claimant after receiving the report and he admitted he had put his hand on the right side of the cart and asked if he could help the woman move the cart. He denied putting his hands on the handles from behind, trapping her between him and the cart or making any reference to "pushing from behind," or laughing. The employer suspended him pending further investigation. The investigation consisted of speaking with the female co-worker and two other eye witnesses, all of whom allegedly confirmed the report. Mr. Brown was discharged by Supervisor Shane Bonnett on April 24, 2008.

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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the claimant denied any wrong doing and the employer has failed to present any written statements or direct testimony from any of the eye witnesses, all of whom are still employed by Vermeer.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of May 15, 2008, reference 01, is reversed. Patrick Brown is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css