

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANTONIO L CRAVER**  
Claimant

**APPEAL NO. 16A-UI-12519-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RELCO LOCOMOTIVES INC**  
Employer

**OC: 10/23/16  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Relco Locomotives, Inc., the employer, filed a timely appeal from a representative's decision dated November 10, 2016, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on December 9, 2016. Claimant participated. The employer participated by Ms. Debra Rectenbaugh-Pettit, Chief Legal Officer, and Mr. Tim Ash, Human Resource/Safety Compliance Manager. Employer's Exhibits 1 through 7 were admitted into the hearing record.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Antonio Craver was employed by Relco Locomotives, Inc. from January 4, 2016 until October 24, 2016 when he was discharged from employment. Mr. Craver was employed as a full-time mechanic and was paid by the hour. His immediate supervisor was Erin Reves.

Mr. Craver was discharged on October 24, 2016 based upon an incident that had taken place on October 19, 2016. Under established company policy, new employees are subject to discharge if they accumulate three handbook violations within a one year after their hire date. Mr. Craver had received a written warning on July 27, 2016 for being absent from work on two occasions without sufficient unpaid leave time to cover the absences. On September 22, 2016, the claimant was given a second disciplinary action in the form of a suspension from work for demonstrating poor work ethic by using a personal telephone during working hours and using company equipment for a non-work reason. The third handbook violation that caused Mr. Craver to be discharged took place on October 19, 2016. On that date, Mr. Craver had been assigned temporarily to perform mechanical/electrical work on a locomotive whose repairs had been nearly completed. Mr. Craver had previously worked only in the facility's "truck"

department and the use of blue flags to identify workers on projects was not utilized because of the nature of that work.

Established company safety policy requires that all Relco employees who are working on, under or between an engine or rolling equipment that is coupled to an engine use a blue flag, or blue signal and attach it to the engine or rolling equipment so that it is visible to other workers. Employees are required to remove the blue flag or marker whenever they leave the equipment. The purpose of the rule is to allow the company to account for all employees in the event of a mishap or an employee is unaccounted for. The company places great emphasis on the rule and its application. Employees are informed of the rule at the time of orientation and the rule is extensively covered in the company's handbook as well.

On October 19, 2016, the claimant had placed his blue flag on the locomotive, but had mistakenly placed the flag on the wrong side of the locomotive. Mr. Craver was new to that work department and believed that he had properly placed the marker on the machine. It appears that another worker noticed the claimant's mistake and moved Mr. Craver's blue marker flag to the other, correct, side of the locomotive. Later, when Mr. Craver's duties on the engine were completed he was instructed that he could leave. Mr. Craver exited the locomotive on the same side that he had entered it and because the flag had been moved, did not see it. Mr. Craver did not remember the flag and left the work area. Approximately five minutes later he was called by his supervisor and told to return to the work area to get his flag. Mr. Craver heard nothing further at that time. The claimant was discharged the following week after the employer had investigated the safety violation.

It is the employer's position that the claimant was provided reasonable and adequate information about the blue flag safety requirement and the violation of a known safety rule is considered to be a serious violation by the employer which can lead to the discharge of an employee on the first occurrence. It is employer's further position that the October 19, 2016 incident was the claimant's third violation during his probationary period and subjected the claimant to discharge under company policy.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged from employment under non disqualifying conditions.

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 job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not always serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be "substantial." When based upon carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

An employer may discharge an employee for any number of reasons, or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. The administrative law judge concludes based upon the evidence in the record that the claimant's conduct in failing to properly remove the blue warning flag on October 19, 2016, was not intentional on the part of the claimant, but due to his unfamiliarity with using the flag system, its removal by another employee without the claimant's knowledge, and carelessness on the part of the claimant. The administrative law judge concludes that the claimant's carelessness was not because of a wrongful intent and was not so recurrent so as to have manifested equal intent.

While the decision to terminate Mr. Craver may have been a sound decision from a management viewpoint, the employer has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure or prior warning. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated November 10, 2016, reference 01, is affirmed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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