

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSE J SMITH**  
Claimant

**APPEAL NO. 14A-UI-03007-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MID-STATES MFG & ENGR INC**  
Employer

**OC: 02/16/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated March 11, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a hearing was held in Ottumwa, Iowa on July 23, 2014. Claimant participated. The employer participated by Ms. Amanda Snyder, Human Resource/Accounting Manager; Mr. Gary Cooper, Plant Superintendent; Mr. Shawn Tilcher, Fabrication Supervisor, and Mr. Donald Dalton, Maintenance Supervisor. Employer's Exhibits A, B, and C and Claimant's Exhibit One were received into evidence.

**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: Jesse Smith was employed by Mid-States Manufacturing Engineering, Inc. from October 29, 2011 until February 14, 2014 when he was discharged from employment. Mr. Smith was employed as a full-time fabrication department worker and was paid by the hour. His immediate supervisor was Shawn Tilcher.

Mr. Smith was discharged on February 14, 2014 for violating a work rule and a specific work directive that had been given to him not to work on personal projects during company work hours.

On February 13, 2014, Mr. Smith was given authorization to purchase pieces of scrap metal from the company for Mr. Smith's private use. Mr. Smith was specifically reminded and warned by the plant superintendent that morning that the purchase of the product did not authorize him to work on the metal for any personal projects during company working hours. This issue had been a problem in the past and the plant superintendent emphasized to Mr. Smith that working on any personal project during company time was unauthorized unless he had specific

permission to do so. Mr. Smith had acknowledged receipt of the company handbook that contained the rule and the claimant as well as other workers had been reminded of the rule approximately one month before in a group meeting.

Later that day when management personnel had been called to a meeting, Mr. Smith was observed working on a personal project with the metal that he had been authorized to purchase. Mr. Dalton, the maintenance supervisor, noted that Mr. Smith was working on his personal project during company working hours and the work was being performed during non-lunch or break periods. Mr. Dalton took photographs of the claimant's activities and notified management. When initially questioned about the matter, Mr. Smith denied working on his personal project during working hours and asserted that he had been authorized to do so.

It is the claimant's position that he believed that he had authorization to work on his personal project when the company authorized him to purchase scrap metal that he intended to use for his personal project. It is the claimant's further position that work on the project took place primarily during lunch or break periods. The claimant further asserts that work on the project was not for his own benefit, but was being conducted as a "test" where he was experimenting with bending metals for the "benefit of the company."

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 discharge cases. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the evidence in the record establishes that the claimant clearly knew or should have known that working on personal projects on company working hours without the specific authorization of company management was a violation of company rules and could jeopardize his employment. The claimant had been previously warned and suspended for working on personal projects during company time, the claimant had signed an acknowledgement of the company handbook that included the work rule, claimant and other employees had been reminded of the rule approximately one month before, and the claimant had been specifically warned not to violate the rule on February 13, 2014 by the plant superintendent. Although clearly put on notice of the employer's expectations, Mr. Smith nevertheless violated the rule by working on his personal project that day during company working time when he was not on break or on a lunch period and when initially questioned provided untruthful statements about his activities.

The evidence in the record clearly establishes that the claimant was working on his personal project and that the conduct did not take place during break periods or at lunch. The evidence also establishes that the work was not for the benefit of the company but for Mr. Smith's own personal benefit.

In view of the previous warning, suspension and the caveat that was specifically given to the claimant that morning, the administrative law judge concludes that the claimant chose to willfully disregard work instructions and violate the rule resulting in his discharge from employment. The administrative law judge finds that the claimant's explanations strain credibility. Claimant is disqualified from the receipt of unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's decision dated March 11, 2014, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and 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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