

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEVIN STRAH
Claimant

KATECHO INC
Employer

APPEAL 17A-UI-07688-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/02/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 27, 2017, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 16, 2017. Claimant participated. Employer participated through human resources manager Konny Goff and manufacturing manager John Lenzi.

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: Claimant was employed full-time as a supervisor from July 18, 2013, and was separated from employment on June 13, 2017, when he was discharged.

The employer has a policy that requires employees to follow all of the proper procedures in the work order. The employer's conduct and work rules policy provides that employees will be disciplined, up to and including discharge, for excessive scrap or rejects.

The employer manufactures medical devices and the parts have to meet specific requirements in order to be used. Before an operator can start building/manufacturing parts, the operator has to set the machine up. Once the operator sets the machine up, the operator asks for the first article. Claimant then measures the parts to make sure they are within the measurements of the engineering specifications. During the first article check, claimant is also responsible for making sure the machine is setup correctly and everything is in the right orientation. If everything is correct and in accordance with the engineering specifications, then claimant signs off on the first article. Once claimant signs off on the first article, then the operator can run the machine and build the parts. While the operator is building the parts, the operator periodically checks the parts to make sure they are being built within the engineering specifications. The operator has to sign off when performing the operator's periodic inspection. At the end of the work order, the operator calls for the last article check. For the last article check, claimant re-

measures to make sure that everything is still within the engineering specifications. Claimant testified he was not instructed to recheck the machine and its setup during the last article check.

The final incident that led to discharge occurred during claimant's shift on June 12, 2017. On June 12, 2017, claimant signed off on the first and last articles for 5220 parts as being within the engineering specifications. When claimant signed off on the first and last articles, everything was within the dimension specifications, but the lamination of conduction was incorrect. The operator had placed a roll of material on the machine incorrectly during setup. The roll had silver on one side and silver chloride on the other side. Claimant testified the two surfaces are close in appearance, but there are marks on the edge to identify each side. After the operator placed the roll on the machine, claimant was responsible for ensuring it was installed the right way. When claimant checked the roll on June 12, 2017, he did not notice the operator had reversed the roll and installed it incorrectly. Claimant signed off on the first article and the operator built the parts with the roll incorrectly installed. The operator performed a periodic inspection and signed off that the part was within the engineering specifications. Claimant did not check the machine setup during the last article check. Claimant only measured the parts dimensions and did not notice lamination of conduction was incorrect.

On June 13, 2017, the employer discovered that all 5220 parts were not within the engineering specifications. The employer started an investigation into what happened. Mr. Lenzini contacted claimant about the issue. Claimant indicated that the parts measured off correctly on the first article and last article and he had signed off on both articles. Mr. Lenzini informed claimant the silver was backwards because the operator had reversed the rolls. The employer had to destroy the 5220 parts and redo the order resulting in approximately a \$5000.00 loss. When claimant came to work on June 13, 2017, the employer discharged him. Claimant had previously been warned for the same issue. Claimant testified he worked hard and did the best job he could, he just made a mistake.

On April 21, 2017, the employer gave claimant a written warning for signing off on the first and last articles, but the parts did not meet the engineering specifications. Claimant was warned that his job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Iowa Admin. Code r. 871-24.32(5) provides:

Discharge for misconduct.

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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). Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if

the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant testified on June 12, 2017 he did not purposefully fail to notice the operator reversed the roll when it was initially setup on the machine causing the silver to be placed on backwards. Claimant credibly testified he was performing his job duties to the best of his ability and he just made a mistake. Claimant signed off on the first article and he later signed off on the last article without noticing the roll was installed incorrectly. It is also noted that the operator signed off on the part as meeting the engineer specifications during the operator's periodic check. Although claimant had had been warned regarding his job performance for the same issue on April 21, 2017, the employer did not present any evidence that claimant "demonstrated a wrongful intent on his part." *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (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). The employer has failed to meet its burden of proof in establishing disqualifying job misconduct. Benefits are allowed.

DECISION:

The July 27, 2017, (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs