

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JESSE R PURVIS**

Claimant

**APPEAL 16A-UI-12857-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**O'REILLY AUTOMOTIVE INC**

Employer

**OC: 05/29/16**

**Claimant: Respondent (1)**

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

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the November 23, 2016 (reference 04) unemployment insurance decision that allowed benefits to the claimant based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on December 30, 2016. The claimant, Jesse R. Purvis, participated personally. The employer, O'Reilly Automotive Inc., participated through witness Julie Akers. Employer's Exhibits 1 - 3 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact finding documents.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an outbound material handler from June 29, 2016 until his employment ended on October 26, 2016. Claimant worked in a warehouse and his job duties included lifting automotive parts off of a conveyor belt and placing them in their appropriate totes or on a pallet for shipping.

The employer has a written policy in place which provides that claimant can be discharged from employment for poor work performance. See Exhibit 2. Claimant received this written policy at the time of hire. See Exhibit 2. The employer's policy provides that evaluations will be conducted at the employee's 45-day mark and 90-day mark. Claimant received a written

evaluation on August 3, 2016 which found that his performance needed improvement in accuracy, quality, quantity, training and overall performance. See Exhibit 3. Claimant was never found to have unsatisfactory work in any areas. See Exhibit 3.

Claimant received another evaluation on September 14, 2016 where he was found to need improvement on accuracy, quality and quantity of work, and training; however, his overall evaluation was satisfactory. See Exhibit 3. The employer extended his training period for up to thirty days at this time. See Exhibit 3. The employer also presented a progressive discipline form to claimant on September 14, 2016 for not “keeping busy” and working at a more productive pace. However, this disciplinary form does not state what the actual expectation for claimant was as it related to either the amount or length of scan gaps. See Exhibit 1.

On or about October 26, 2016 the claimant was again due for a final evaluation. At this evaluation the employer had the option of either keeping claimant employed as a permanent full-time employee or discharging him for failing to satisfactorily complete his training period. The employer discharged claimant at this time because it believed that claimant was had too many long gaps in time between scanning parts. The employer believed that this was poor work performance under its written policy. However, there was no specific verbal or written rule which would have informed claimant about what amount of time was acceptable or unacceptable for scan gaps.

There was no specific current act of scan gaps that the employer established between September 14, 2016 and October 26, 2016 which led to its decision to discharge the claimant, rather the claimant’s extended thirty-day training period had expired and the employer needed to make a decision about whether to keep claimant employed as a permanent full-time employee or to discharge him for failing to satisfactorily complete his training period.

Claimant has received benefits in the gross amount of \$282.00 for the six weeks between November 5, 2016 and December 10, 2016. Employer did participate in the fact finding interview.

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

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

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Further, 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).

Further, 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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that

equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). Claimant's action in having gaps in scanning does not rise to the level of "wrongful intent" required to disqualify him from receiving benefits.

While it is true that claimant had received a written reprimand for not "keeping busy," there was no specification as to what the employer considered to be an acceptable or unacceptable amount of time between scans to the claimant. Further, the employer has failed to prove that there was any current act of misconduct, or scan gaps, that occurred from September 14, 2016 to the date of discharge. In fact, the only reason claimant was discharged was because his probationary time had passed and the employer needed to either continue claimant's employment as a permanent employee or discharge him for failing to pass his probationary period.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

There must be a current act of misconduct to disqualify the claimant from receiving benefits. In this case, there was none. Without a current act, the employer failed to meet its burden of proof of establishing a current act of disqualifying job misconduct. As such, benefits are allowed. Because benefits are allowed the issues of overpayment and chargeability are moot.

**DECISION:**

The November 23, 2016 (reference 04) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

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