

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY A CHENEY
Claimant

APPEAL NO. 10A-UI-07973-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ENGINEERED PLASTIC COMPONENTS INC
Employer

OC: 12/27/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.6-2 – Burden of Proof

STATEMENT OF THE CASE:

Troy A. Cheney filed a timely appeal from an unemployment insurance decision dated May 27, 2010, reference 01, that disqualified him for benefits. Due notice was issued for a telephone hearing to be held July 20, 2010. Mr. Cheney did not respond to the hearing notice. The employer responded to the notice by providing the names and phone number of two witnesses. However, the call to that number at the time of the hearing was answered by a recording. The administrative law judge left a message for the employer to call within a half hour if it wished to participate. There was no further contact. This decision is based on information contained in the notes taken at the fact-finding interview.

ISSUE:

Was the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Troy A. Cheney was employed by Engineered Plastic Components, Inc. from June 28, 2007 until he was discharged May 7, 2010. Sometime prior to the discharge Mr. Cheney pushed the wrong button on a machine. It caused \$30,000.00 of damage. He had received prior warnings during his employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record is sufficient to establish disqualifying misconduct. It is not.

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. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). While misconduct is found most often in willful behavior contrary to an employer's interest, it may also be found in repeated acts of carelessness or in negligence of such a degree as to be the equivalent of willful misconduct.

As noted above, the employer did not participate in the hearing. The evidence in this record does not indicate the date of the final incident. The administrative law judge has no way of determining if it was a current act at the time of discharge. The evidence also does not indicate if Mr. Cheney's actions were careless or negligent. Without evidence that the final incident was both careless and an act of misconduct, there can be no disqualification for unemployment insurance purposes.

DECISION:

The unemployment insurance decision dated May 27, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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