

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN A DARLAND
Claimant

APPEAL NO: 15A-UI-06692-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN GORP CORPORATION
Employer

OC: 05/10/15

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

John A. Darland (claimant) appealed a representative's June 4, 2015 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Van Gorp Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 26, 2015. The claimant participated in the hearing. Dorsha Moyer appeared on the employer's behalf. One other witness, Brenda Voss, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on January 21, 1986. He worked full time as a welder in the employer's conveyor and pulley system manufacturing facility. His last day of work was April 9, 2015. The employer discharged him on that date. The reason asserted for the discharge was that the claimant had allegedly sent work along down the line knowing that they were incorrect.

The employer normally has a four-step disciplinary process. The claimant had previously been at step two as of February 11, 2015, following an incident where a backup bar was made crooked instead of being cut down.

On April 2 the claimant had planned on leaving at about noon for some personal business. He was working on two pulleys, and it was after 3:00 p.m. when he thought he was finished with them. He then realized that the inset measurement was wrong, it had been made at

Twenty-three and one-half inches, when it should have been twenty-two and five-eighths inches. He went to his supervisor and reported the problem, and the supervisor told him it would need to be fixed, which would have taken approximately another 40 minutes. The claimant indicated that he could not do it, that he needed to leave. The supervisor responded, "We'll take care of it," so the claimant left them on the table and left. The problem did not get corrected at that stage and further processing was done on the parts, so that when the problem was rediscovered, the error could not be easily fixed.

Because the employer concluded that the claimant had not reported the problem but had passed along the parts knowing that they were incorrect, the employer determined the situation was sufficiently serious to skip the third step of discipline and proceed to discharge.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is that he had knowingly sent along incorrect parts. The employer relies exclusively on the at least second-hand account from the claimant's supervisor to suggest that the claimant did not report the problem before leaving; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the supervisor might have been mistaken, whether he is credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of the supervisor's report. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has

not satisfied its burden to establish by a preponderance of the evidence that the claimant did not report the problem to his supervisor so that they could have been corrected before further processing occurred. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's June 4, 2015 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/mak