

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN L MATTSON**  
Claimant

**APPEAL NO: 12A-UI-00431-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RJK INC**  
Employer

**OC: 12/11/11**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

RJK, Inc. (employer) appealed a representative's January 5, 2012 decision (reference 01) that concluded Brian L. Mattson (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 10, 2012. The claimant participated in the hearing. Holly Jacobi appeared on the employer's behalf. During the hearing, Employer's Exhibits One, Two, and Three were entered into evidence. 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:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The employer is a temporary employment firm. The claimant's first and only assignment with the employer began on August 3, 2010. He worked full time as a laborer at the employer's business client on a 12-hour swing shift. His last day on the assignment was November 28, 2011. The assignment ended because the business client determined to end it on November 29 due to the claimant having too many mistakes on the job.

The business client had given the claimant an initial written warning on July 1, 2011 for leaving valves open so that a tank overflowed; the claimant acknowledged that this had been his error. The business client gave the claimant another warning with a suspension on August 24, 2011 for failing to check some machines resulting in plugging; the claimant also did not dispute his responsibility regarding this incident.

On November 28 there was some serious flooding in the business client's facility. On November 29 the business client determined that the claimant had left one valve fully open and another valve partially open, leading to the flooding, and determined to dismiss the claimant. The claimant denied that both valves were open; one valve was shut, and the other valve was only partially open. He also asserted that it was not the partially open valve which had caused the flooding, but that the cause had been an outside water tank, for which he had not had any responsibilities.

The claimant established an unemployment insurance benefit year effective December 11, 2011. He received credit for unemployment insurance benefits from that date through February 18, 2012 in the amount of \$3,850.00.

#### **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. 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. 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. 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 the conclusion that he had been responsible for a third mistake on the job after a final warning and suspension. 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 was in fact responsible for the final error. 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 January 5, 2012 decision (reference 01) is affirmed. 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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