

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID D CAVENDER
Claimant

MATTESON MARINE SERVICE INC
Employer

APPEAL 19A-UI-05353-S1-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/26/19
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

David Cavender (claimant) appealed a representative's June 24, 2019, decision (reference 03) that concluded ineligibility to receive unemployment insurance benefits after the claimant's separation from work with Matteson Marine Service (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 29, 2019. The claimant participated personally. The employer participated by Lisa Grant, Office Manager, and George Olson, Fabricator/Welder. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 23, 2018, as a full-time welder. On or about January 24, 2019, the employer terminated the claimant for performance/attendance issues. The employer rehired the claimant on or about January 28, 2019, as a full-time welder. The employer did not have a handbook containing policies. The claimant saw no policies posted in the workplace. The employer did not issue the claimant any warnings.

During the week ending April 6, 2019, the employer told the claimant to cut bumpers from a boat with an acetylene torch. The claimant had used an acetylene torch but had never cut bumpers off a boat. The fabricator/welder offered some instruction and the claimant thought he was following his advice. The claimant had trouble with the job because the tire rubber caught fire and rust impeded the work. The job took the claimant a week to perform. The fabricator/welder could have performed the job in a day.

On April 9, 2019, the fabricator/welder told the claimant that it was his last week of employment. The claimant asked why. The fabricator/welder said, "You know Larry. Larry does what Larry wants." The claimant called Larry, the owner, but the owner would not return his calls. The

claimant's last day of work was April 11, 2019. The employer terminated the claimant for poor performance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of his lack of knowledge in cutting off bumpers. The claimant's lack of knowledge is not evidence of intent. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The representative's June 24, 2019, decision (reference 03) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs