

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARIN K LOWE**  
Claimant

**APPEAL NO: 06A-UI-08089-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JTV MANUFACTURING INC**  
Employer

**OC: 07/02/06 R: 01**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated August 4, 2005, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 28, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Dennis Orthmann participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked part time for the employer as a production worker from November 7, 2005, to February 15, 2006. Kelle Vos was the claimant supervisor.

The claimant received a chemical burn on his arms at work at the end of December 2005. He was periodically off work due to the injury and complications from the injury afterward. The claimant reported to work on February 15, but Vos told him to go home for the rest of the week after the claimant showed Vos his arms. The claimant called the employer on February 20 and said he needed to take the day off because his mother was being released from the hospital that day after knee surgery. Vos said that was fine.

When the claimant went into work on February 21, 2006, he was informed by Vos that his employment was terminated because of his irregular attendance. The claimant started a new job on February 23. On February 27 or 28, one of the owners, Rian Vos, called the claimant and indicated the employer would rehire him. The claimant informed Vos that he had accepted other employment.

## REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. The call made by Rian Vos after the claimant was discharged does not change the nature of the separation from employment.

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.

There was evidence Rian Vos had offered the claimant work on February 27 or 28. The legal issue of whether the claimant failed to accept an offer of suitable work was not listed as an issue on the hearing notice. This issue is remanded to the Agency for an investigation and determination.

**DECISION:**

The unemployment insurance decision dated August 4, 2005, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The issue of whether the claimant failed to accept an offer of suitable work is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw