

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SETH N CASTILLO

Claimant

APPEAL NO. 15A-UI-11325-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EATON CORPORATION

Employer

OC: 8/30/15

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Eaton Corporation (employer) appealed a representative's September 30, 2015 (reference 01) decision that concluded Seth Castillo (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 26, 2015. The claimant participated personally. The employer participated by Natalie Petersen-Menefee, Human Resources Development Program Participant. The employer offered and Exhibit One 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 30, 2004, as a full-time cell technician-maxim. The employer has a handbook on an internal website. He would be able to access the handbook during breaks or if his work allowed him to take time to look at the handbook. The employer issued the claimant six warnings for failure to follow the employer's rules. The warnings were in writing and placed in the claimant's file. The claimant was not given a copy of them.

In May 2015, the claimant was assigned to work in an area he had not worked in for 18 months. The claimant had a week's refresher course and was put back at work. On August 4, 2014, the employer issued the claimant a letter of concern about his performance. The letter indicated some items the claimant should improve but did not warn the claimant of any consequences. The employer did not give him a copy. On April 4, 2015, the employer issued the claimant a letter of concern follow up and gave him a copy. The employer wanted him to be more committed, be more quality/customer oriented, and have more of a drive for results. The employer notified the claimant that further infractions could result in termination from employment.

On August 16, 2015, an operator made some adjustments the claimant had never seen before. The claimant performed his quality checks but lacked the experience to see a bur created on the item that was produced. The person doing quality checks on the next shift had twenty years of experience and caught the issue. The products did not have to be scrapped. On August 17, 2015, the supervisor talked to the claimant and the claimant learned how to recognize and know what to do in the future. On August 28, 2015, the employer terminated the claimant for failure to see a problem in a quality check.

The claimant filed for unemployment insurance benefits with an effective date of August 30, 2015. The employer participated personally at the fact-finding interview on September 29, 2015 by Natalie Petersen-Menefee.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

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). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and, therefore, not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). 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 training. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's September 30, 2015 (reference 01) decision is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/can