

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON C COBERLY
Claimant

APPEAL NO. 07A-UI-11334-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HI-TECH ELECTRONIC ASSEMBLIES INC
Employer

**OC: 10/21/07 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

Hi-Tech Electronic Assemblies, Inc., filed a timely appeal from an unemployment insurance decision dated November 29, 2007, reference 01, that allowed benefits to Aaron C. Coberly. After due notice was issued, a telephone hearing was held December 28, 2007, with Mr. Coberly participating and presenting additional testimony by Jessica Allensworth. Co-owner and Production Manager Ray Price participated for the employer.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Aaron C. Coberly worked as machine operator for Hi Tech Electronic Assemblies, Inc., from February 21, 2006, until he was discharged October 25, 2007. At the beginning of business on October 22, 2007, Mr. Coberly and two other coworkers were told that they would be suspended for three days for substandard work. When they returned to work on October 25, 2007, Mr. Coberly and one coworker were discharged. A third coworker, one who had been with the company for a shorter period of time, was not discharged.

Over the weekend of October 20 and 21, Production Manager Ray Price inspected work recently completed by the three employees. He found 71 mistakes made by Mr. Coberly, 60-some errors made by the other coworker who was discharged, and a larger number of errors made by the third coworker. After the suspension went into effect at the close of business on October 22, 2007, Mr. Price again inspected the work and found fewer errors.

Mr. Coberly had not received any specific warnings about his job performance in the past. Group admonitions to reduce the number of errors were given from time to time. Mr. Coberly had been disciplined for other matters in the past.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements that it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). If there is no misconduct in the final incident, no disqualification may be imposed even if the claimant has been guilty of misconduct in the past.

As noted in the definition above, misconduct is most often found in deliberate actions contrary to the employer's interests. It may also be found in repeated acts of carelessness or negligence. However, poor performance as the result of lack of skill or simple mistakes is not considered to be misconduct for unemployment insurance purposes. The evidence in the record persuades the administrative law judge that Mr. Coberly and his coworkers committed errors in the course of their work. There is no evidence, however, to establish that the errors were either deliberate or negligent. Also troubling to the administrative law judge is the fact that the employer retained the employee with the most errors while discharging the two employees with greater seniority. Since the evidence does not establish misconduct in the final incident, the administrative law judge cannot consider prior discipline for other matters.

DECISION:

The unemployment insurance decision dated November 29, 2007, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/css