

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JONATHON P MESECHER**

Claimant

**ELECTRICAL POWER PRODUCTS INC**

Employer

**APPEAL NO: 11A-UI-03920-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/09/11**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated March 21, 2011, reference 01, that held he was discharged for misconduct on December 28, 2010, and benefits are denied. A hearing was held in Des Moines, Iowa on April 26, 2011. The claimant participated. Paul Moon, Production/Operations Manager, participated for the employer. Employer Exhibit 1 and Claimant Exhibits A and B was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on July 22, 2010 as an employee in the wiring department, and last worked on January 10, 2011. The claimant became ill while working on January 10 after working 6.5 hours and he was given permission to leave. The claimant was excused from work for illness on the following day.

The policy is that an employee begins work at 7:30 a.m. after being absent the previous two days. When claimant came into work at 6:00 a.m., supervisor Borges instructed that he not clock in until 7:30 a.m. Later, claimant was discussing that he had a performance review by Manager Moon in front of other persons, and Moon asked him to leave work. On January 13 Moon discharged claimant for insubordination.

During the hearing, Moon was questioned whether claimant was discharged for misconduct and Moon responded with a long, equivocal, rhetorical answer. Moon explained that he liked the claimant and it was a difficult decision to discharge him. Upon rebuttal, Moon was emphatic he discharged claimant for insubordination. Moon offered some 40 pages of documents most of which had nothing to do as to why he discharged him.

Claimant offered that Moon had given him an early performance review, but he delayed implementing the raise he was entitled to receive to the point it became an issue for him at work.

**REASONING AND CONCLUSIONS OF LAW:**

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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on January 13, 2011.

The claimant denied he was insubordinate for not working until his clock-in time at 7:30 a.m. on January 10. The employer failed to offer his supervisor as a witness to refute this testimony. The employer has failed to establish claimant was insubordinate. The employer witness equivocated about whether claimant was discharged for misconduct, and given that it offered multiple documents as evidence that had nothing to do with it, casts considerable doubt on the credibility of the reason for discharge.

**DECISION:**

The department decision dated March 21, 2011, reference 01, is reversed. The claimant was not discharged for misconduct on January 13, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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