

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EVAN E GARR**  
Claimant

**APPEAL NO: 14A-UI-01460-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 01/12/14**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

TPI Iowa, L.L.C. (employer) appealed a representative's February 5, 2014 decision (reference 01) that concluded Evan E. Garr (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 3, 2014. The claimant participated in the hearing. Danielle Williams appeared on the employer's behalf and presented testimony from two other witnesses, Andy Elliott and Bill Freytag. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

After a prior period of employment with the employer through a temporary employment firm, the claimant started working directly for the employer on May 3, 2010. He worked full time as a quality inspector on an overnight shift. His last day of work was the shift that began on the evening of January 11, 2014. The employer discharged him on that date. The reason asserted for the discharge was alleged falsification of measurements.

The claimant had worked on a blade that was being prepared on the shift of the evening of January 5 into the morning of January 6. There ended up being sufficient problems with the blade that it ended up being scraped. One of the problems which the employer attributed to the claimant was that there were excessively large gaps between the upper and lower portions of the blade which the claimant failed to detect and which were falsely reported on a quality inspection checklist. The employer asserted that there had been another quality inspector who

reported that the claimant had not done the measurements, but had “pencil-whipped” “measurements” on the inspection report before the blade was even closed. No first-hand testimony to this effect was presented. The claimant denied that he had falsified the measurements or completed the form before the blade was even closed; he noted that the other quality inspector who supposedly reported witnessing him doing this was a day shift employee who had not even been on duty during the time he was working on the checklist for the blade. He had had some concerns about the quality of the blade due to some increased glue temperatures which he had reported to the engineering technician who was responsible for the blade, as was proper procedure.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the assertion that he had falsified measurements on the checklist. The employer relies exclusively on the second-hand account from the day shift quality inspector; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether that inspector might have been mistaken, whether she actually observed the entire time, whether she is credible, or whether the employer’s witness might have misinterpreted or misunderstood aspects of that report. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant falsified the measurements he reported on the checklist. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant’s

actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's February 5, 2014 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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