

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**PATRICK HEALEY  
509 E 10<sup>TH</sup> ST  
MUSCATINE IA 52761**

**J-M MANUFACTURING  
PO BOX 99  
WILTON IA 52778**

**JOHN DOAK  
ATTORNEY AT LAW  
PO BOX 3250  
1000 – 36<sup>TH</sup> AVE  
MOLINE IL 61265**

**Appeal Number: 05A-UI-08582-ET  
OC: 07-17-05 R: 04  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 8, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 6, 2005. The claimant participated in the hearing with Attorney John Doak. Todd Howard, Plant Manager; Shane Newsom, Senior Operator; Bonnie Davies, Office Manager; Kevin Gute, Production Superintendent; and Dave Nipert, Crew Leader, participated in the hearing on behalf of the employer.

#### FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time operator for J-M Manufacturing from April 1994 to June 10, 2005. He was discharged for unsatisfactory performance per the employer's progressive discipline policy. A written warning was issued November 14, 2002, for making an incorrect puller calculation that resulted in scrap. A second written warning was issued October 23, 2003, for moving a piece in the wrong direction and not telling the crew leader about it. A third written warning was issued November 19, 2003, when the claimant did not notice he was creating unfinished chamfer. He was suspended for three days November 21, 2003, when he failed to follow the unit size procedure. The next violation occurred July 21, 2004, when the claimant was late on changing the vacuum voids. The employer demoted the claimant from an A operator to a B operator and suspended him for seven days. The claimant was directed to let the crew leader know of any problems so that they could be resolved. The incident prompting the discharge occurred the following year on June 10, 2005, when the claimant produced pipe below specifications for approximately three hours and he did not inform the incoming shift supervisor.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant was discharged for unsatisfactory performance according to the progressive disciplinary policy. The employer relied on five previous written warnings before the incident prompting the discharge, the most recent of which was issued in 2004. Three others were in 2003 and one was in 2002. Consequently, there was only one current incident and even though the past acts were performance issues, they are unrelated to the current act. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8). The claimant was discharged for producing pipe below specification and not informing his shift supervisor. While his performance was unsatisfactory on that occasion, there is no evidence of any intentional misconduct. Consequently, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

DECISION:

The August 8, 2005, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/tjc