

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT D WRIGHT**  
Claimant

**APPEAL NO: 14A-UI-06831-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SIMONSEN INDUSTRIES INC**  
Employer

**OC: 06/15/14**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Robert D. Wright (claimant) appealed a representative's July 1, 2014 (reference 01) decision that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Simonsen Industries, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 24, 2014. The claimant participated in the hearing. Greg Ebersole appeared on the employer's behalf and presented testimony from one other witness, Steve Smith. 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:**

Reversed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on June 27, 2005. He worked full time as a welder. His last day of work was June 6, 2014. The employer suspended him that day and discharged him on June 12, 2014. The reason asserted for the discharge was seeking to agitate another employee.

The claimant and another employee who was a department head had been friends. In about March 2014 the two had a falling out. Since then the two employees acted childishly toward each other, with the department head calling the claimant a "retard" and making fun of the way he walked and the claimant "whooping" when he saw the department head and telling him to "grow up." While the employer had some knowledge this was going on, no warnings were issued.

This occurred again on June 6. There was no physical altercation. However, the employer determined that it was tired of the conduct and determined to discharge the claimant.

#### **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. Rule 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. Rule 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The gravity of the incident and the number of prior violations or prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

The reason cited by the employer for discharging the claimant is his childish behavior toward the other employee/department head. While the behavior had been ongoing, the employer had not warned the claimant that he needed to stop or risk being discharged. Under the circumstances of this case, the claimant's engaging in the childish behavior again on June 6 was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or was a good faith error in judgment or discretion. 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 July 1, 2014 (reference 01) decision is reversed. 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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