

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL J NEIERS JR**  
Claimant

**APPEAL NO. 09A-UI-00227-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ORBIS CORPORATION**  
Employer

**OC: 11/09/08 R: 04**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

Michael Neiers filed an appeal from a representative's decision dated January 5, 2009, reference 01, which denied benefits based upon his separation from Orbis Corporation. After due notice was issued, a hearing was held by telephone on January 28, 2009. Mr. Neiers participated personally. Participating as a witness was Dale Walter, Union Representative. Although duly notified the employer chose not to participate.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from August 16, 1996 until November 9, 2008 when he was discharged from employment. Mr. Neiers worked as a molding technician on a full-time basis and was paid by the hour.

The claimant was initially discharged on November 9, 2008 based upon the employer's perception that he had violated a company work rule. Subsequently, the matter was reviewed and it was determined that the work rule had not been violated and Mr. Neiers was reinstated to employment.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that Mr. Neiers was discharged for intentional misconduct in connection with the employment. It does not.

The evidence in the record establishes that the claimant was initially discharged based upon the employer's belief that the claimant had violated a company rule relating to locking and tagging company equipment. Subsequently, the matter was reviewed by the company and it was determined that the claimant had not violated the company rule and was reinstated.

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.

Based upon the hearing record, the administrative law judge concludes that intentional disqualifying misconduct on the part of the claimant has not been shown. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated January 5, 2009, reference 01, is reversed. The claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs