

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRENT A JOHNSTON
Claimant

APPEAL 21A-UI-24247-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LAMMERS MOTORSPORTS INC
Employer

**OC: 08/22/21
Claimant: Respondent (1)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On November 3, 2021, the employer/respondent filed an appeal from the October 25, 2021, (reference 02) unemployment insurance decision that allowed benefits based on claimant being dismissed while in a trial period. The parties were properly notified about the hearing. A telephone hearing was held on December 22, 2021. Claimant did not participate during the hearing. Employer participated through Service Manager, DJ Stander. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Should claimant repay benefits?

Should the employer be charged due to employer participation in fact finding?

Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 26, 2021. Claimant worked as a full-time mechanic. Claimant was separated from employment on August 26, 2021, when he was discharged.

When claimant was hired he was put on a probationary period for six months. When claimant first began working his work performance looked promising to the employer. However, the employer's view changed quickly when his workmanship showed deficiencies. On July 7, 2021, employer had a conversation with claimant regarding his workmanship on a few of the customers' cars.

On July 28, 2021, there was an incident where claimant performed a repair on a customer's car that was poorly done and could have caused harm to the customer or the customer's car. In another incident Claimant forgot to replace the engine filter during the repair. After these incidents Employer gave Claimant a final warning that if his workmanship did not improve that he would be terminated. Employer then did not allow Claimant to work on customers' cars. Claimant was assigned to work only on the employer's vehicles.

On August 26, 2021, claimant performed a repair on the business' vehicles. The lead mechanic looked at the vehicle and determined the repair was no done properly and the repair was done with damaged parts. The employer terminated claimant for his poor workmanship on August 26, 2021.

Claimant filed for benefits with an effective date of August 22, 2021. Claimant qualified for a weekly benefit amount of \$442.00. Claimant received benefits beginning week ending August 28, 2021, and continued through November 13, 2021.

The employer participated in a fact-finding interview. The employer provided documentation to the fact finder during the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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).

Iowa Admin. Code r. 871-24.32(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

In this case the claimant could not perform the duties of the job. Claimant's workmanship was not satisfactory. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

The employer agreed that claimant had never had a sustained period of time during which he performed his job duties to employer's satisfaction. No intentional misconduct has been established, as is the employer's burden of proof. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed. The employer's account shall be charged.

Since claimant is eligible for benefits the issues of whether claimant was overpaid benefits, whether claimant should repay benefits, and whether employer participated in fact-finding is moot.

DECISION:

The October 25, 2021, (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The employer's account shall be charged.

Since claimant is eligible for benefits the issues of whether claimant was overpaid benefits, whether claimant should repay benefits, and whether employer participated in fact-finding is moot.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 21, 2022

Decision Dated and Mailed

cs/abd