

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEROME L DEEGAN
Claimant

APPEAL NO: 09A-UI-10140-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

POWER ENGINEERING & MFG LTD
Employer

OC: 05/31/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jerome L. Deegan (claimant) appealed a representative's July 9, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Power Engineering & Manufacturing, Ltd. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 13, 2009. The claimant participated in the hearing. Kevin Karms appeared on the employer's behalf and presented testimony from three witnesses, Dennis Schilling, John Warren, and Rich Kime. 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?

FINDINGS OF FACT:

The claimant started working for the employer on November 1, 2008. He worked full time as a quality assurance supervisor in the employer's custom built gear box manufacturing business. His last day of work was June 2, 2009. The employer discharged him on that date. The reason asserted for the discharge was falsification of an inspection report and destruction of company property in the form of data from a computer report.

After completion of the manufacturing process by others in the employer's business, on May 21 the claimant was responsible for inspecting work on gear using a coordinate measuring machine (CMM). The report he generated was not a true summary report, but was a program report including a multitude of measurements generated from the CMM. After delivery of the gear to the customer, the customer expressed concerns that the part did not measure up to the specifications. As the program report he had previously presented was difficult to interpret, he was asked to convert it into a more understandable report. He prepared a handwritten report, transcribing information from the program summary to the handwritten report. One number he transcribed he designated as the outside diameter; the figure was acceptably within the margin of error for the proper outside diameter of the gear.

The client provided further outside information regarding the discrepancies with the part's measurements, and on May 28 the employer concluded that the numbers in the claimant's report did not match with the measurements of the part. On June 1 he was asked to show how he had come up with his calculations. When the computer report could not initially be found on the computer, the employer found that the program run was in the recycle bin on the computer. The employer concluded that the claimant had intentionally attempted to dispose of the program run and that he had intentionally failed to disclose that an error had been made on his report.

The claimant denied deleting the program run. Various other employees had regular access to the equipment, and the employer could not establish when the program run had been deleted, that the claimant was the only person who could have done it, or that the program could not have been deleted in the ordinary course of doing other work. The employer noted that had the claimant used the machine's program properly it would have generated its own summary report that would have easily reflected the appropriate and pertinent measurements; the employer implied that the claimant used the unrefined program report and the handwritten summary report to obscure the fact that the measurements were in fact not up to specifications, and that had the claimant more promptly identified that the measurements in his handwritten report were incorrectly transcribed from the unrefined program report, the employer would not have insisted to the client that the gear was within specifications. As was, the employer likely lost the future business of the client.

The claimant had many years of working with a CMM; however, prior to coming to the employer in November 2008, his work had been on a manual machine. He had not received full training on the automated CMM used by the employer.

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 falsification of the program summary report and the deletion of the program run on the computer. The employer has not established that the claimant deleted the program run or that it was deleted in an attempt to destroy something of value. While it is clear that the claimant made an error in interpreting a measurement on the unrefined program report when he prepared his handwritten report, and that that error could have been prevented had he used the automatic summary report generation process, the claimant had not been aware or trained in the use of the CMM's ability to generate an automatic report. Misconduct connotes volition. Huntoon, supra. Under the circumstances of this case, the claimant's error in interpreting the measurement on the unrefined report and his resulting incorrect information on the hand-written summary report was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. While it was clearly a serious error and the employer had a good business reason for discharging the claimant, it 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 9, 2009 decision (reference 01) 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css