

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LANCE E YOUNG
Claimant

JOSEPH L ERTL INC
Employer

APPEAL 16A-UI-13447-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/27/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 16, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 30, 2017. Claimant participated. Attorney William Nicholson participated on claimant's behalf. Claimant registered witness Steve Nadermann prior to the hearing and Mr. Nadermann testified on claimant's behalf. Prior the hearing, the employer registered Robert Burris and Brian Meyer as witnesses. At the start of the hearing Mr. Nicholson informed the administrative law judge that the employer's attorney Glenn Johnson e-mailed Mr. Nicholson on January 28, 2017 and stated the employer would not participate in this hearing. Mr. Johnson asked Mr. Nicholson to inform the administrative law judge that the employer would not participated, which Mr. Nicholson did. The employer did not participate.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a CNC operator from August 4, 2014, and was separated from employment on November 23, 2016, when he was discharged.

Claimant was told by Robert Burris and Brian Meyer that he was discharged on November 23, 2016 due to incorrectly loaded parts on November 21, 2016, which caused damage to parts and the CNC machine. On November 21, 2016, claimant was working his scheduled shift when he loaded some parts into the CNC machine incorrectly. Claimant was not aware that he had loaded the parts incorrectly. Claimant then used the CNC machine with the incorrectly loaded part. When the parts were finished, claimant examined the parts and the incorrectly loaded part was bad, but the cutter in the machine looked ok. Claimant was able to run the next parts successfully with that CNC machine. Later in the evening, claimant pulled a set of parts out of the machine; the first two parts were ok, but the second two were not and a new cutter had to be installed on the CNC machine. The cutter was the part of the CNC machine that had been damaged. After installing the new cutter, claimant was able to use the machine. The employer did not discipline claimant on November 21, 2016. Claimant worked on November 22, 2016 and was not disciplined. Claimant was not aware of any investigation by the employer. The first

time claimant became aware of an issue with his employment from the incident on November 21, 2016 was when the employer discharged him on November 23, 2016.

On November 8, 2016, claimant was given a written warning for a broken tap on the part and the holes had not been tapped. Claimant is not aware of how the tap broke. The employer told claimant that it was either a bad batch of taps or something in the aluminum that should not have been there. The employer did not warn claimant that his job was in jeopardy on November 8, 2016. In approximately July 2015, the employer gave claimant a written warning for walking out. Approximately March 2015, the employer gave claimant a written warning.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions.

Pierce v. Iowa Dep't of Job Serv., 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. On November 21, 2016, claimant did not knowingly load parts incorrectly into the CNC machine. When claimant became aware that a part was loaded incorrectly, he looked at the machine and the cutter looked ok. Claimant was then able to run the machine with more parts until later when the cutter broke. As soon as claimant discovered the cutter was broke, he replaced the cutter and continued working with the machine.

When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Although claimant had a prior warning on November 8, 2016 for a broken tap, no evidence was presented that on November 21, 2016, claimant had any wrongful intent or acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer has failed to meet its burden of proof in establishing disqualifying misconduct. Benefits are allowed.

DECISION:

The December 16, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs