

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD J REGAN
Claimant

APPEAL NO. 12A-UI-12144-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A Y MC DONALD MFG CO
Employer

OC: 09/02/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

A Y McDonald Manufacturing Company filed a timely appeal from a representative's decision dated October 1, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on November 5, 2012. Claimant participated. The employer participated by Mr. Dan Boleyn, Foundry Supervisor.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Donald Regan began employment with A Y McDonald Manufacturing Company on July 18, 1999. The claimant was employed as a full-time foundry laborer. Mr. Regan was discharged on August 31, 2012 based upon the employer's belief that he had falsified work records.

On August 30, 2012 the foundry supervisor, Dan Boleyn, noted a discrepancy in the way he believed Mr. Regan was reporting his work classification. The claimant had clocked in to be paid "average earnings" because he had been assigned to train a temporary employee and believed that that pay classification was correct for the duties. The claimant had been showing the temporary employee how to perform final work on single strap "saddles" in a rear area. It was the employer's belief that Mr. Regan should have been clocked in for "incentive" pay on the saddles and that by the claimant's failure to do so he was "banking time" so that when he later punched in for incentives on that job he would get greater incentives because it appeared that he had spent less time performing the work. Mr. Boleyn, therefore, instructed Mr. Regan to punch in on incentives for the job that he was performing with the trainee. The claimant followed Mr. Boleyn's instructions and was subsequently discharged because he had not been punched in on incentives throughout the time that he was working on the saddle project.

Mr. Regan had been working nights for an extended period and had been recently transferred to days. The claimant was unfamiliar with the exact process or pay classification for the single strap saddles and there was no work order on the saddles themselves so the claimant assumed they were not incentive pay items. Since receiving a three-day suspension some years before the claimant had attempted to be especially careful not to have an issues arise with respect to correct time or duty reporting.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Conduct serious enough to warrant discharge is not necessarily serious enough to warrant the

denial of job insurance benefits. Such misconduct must be “substantial.” When based upon carelessness the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

In this matter the employer made a management decision to terminate Mr. Regan based upon the foundry supervisor’s conclusion that the claimant may have been attempting to inaccurately report incentive pay. The evidence in the record establishes numerous other factors that were at play on August 30, 2012. The claimant was training a temporary employee in a back area where he was unfamiliar with the work. The claimant had recently been transferred to day and the work assigned to the claimant that day did not have a ticket to alert an employee that it was incentive work. Mr. Regan only clocked in for incentive pay on the project after being instructed to do so as he previously believed that “average earning pay” was correct based upon the requirement that he train a new employee and the nature of the work.

While the decision to terminate Mr. Regan may have been a sound decision from a management viewpoint the evidence in the record does not establish intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative’s decision dated October 1, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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