

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KODY R GATHERCOLE**  
Claimant

**APPEAL NO: 14A-UI-03551-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 03/09/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's April 1, 2014 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the April 23 hearing. Danielle Williams, the human resource coordinator, appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in August 2012. He worked full time, third shift in the finishing department. When an employee has performance issues the employer follows its progressive disciplinary policy – verbal warning, written warning, final written warning and then termination.

During the claimant's employment, he received a verbal warning on September 5, 2012, for engaging in horseplay. On September 17, 2012, he received a documented verbal warning for failing to wear ear plugs.

On January 30, 2014, the claimant understood he was authorized to take a clogged bondo machine apart. Later, the claimant learned he was not authorized to do this and received a final written warning on February 7, 2014. He also received a three-day suspension for taking apart a bondo machine. The February 7 warning informed the claimant that any future incidents could lead to his termination (Employer Exhibit Two.)

On March 1, the claimant's supervisor asked the claimant to sand. The claimant told his supervisor he could not sand. The claimant did not sand because he must wear a respirator when sanding and he did not have a respirator. (Employer Exhibit One.) On March 7,

personnel from the quality department told the claimant he needed to do a drill and fill on some blades. The claimant followed the proper procedures, but later discovered a drill and fill had not been needed. After the claimant discovered a drill and fill was not necessary, he again contacted personnel from the quality department to correct the mistake. The claimant ended up drilling through 19 layers of glass.

After following the progressive disciplinary policy, the employer discharged him on March 12, 2014, for on-going performance issues.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. Iowa Admin. Code r. 871-24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. Iowa Admin. Code r. 871-24.32(8).

Based on the employer's progressive disciplinary policy and some performance issues, the employer established justifiable business reasons for discharging the claimant. Even though the claimant followed the proper procedure, he was discharged. The claimant did not intentionally perform his job unsatisfactorily. He did not commit work-connected misconduct. As of March 9, 2014, the claimant is qualified to receive benefits.

**DECISION:**

The representative's April 1, 2014 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of March 9, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css