

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON M TRAVIS
Claimant

APPEAL NO: 12A-UI-04110-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE STAMPING & MFG INC
Employer

OC: 03/04/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's April 12, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Matthew Spahn, the production manager, and Dale Churchill, a union representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons that constitute a current act of work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 2011. He worked as a full-time utility press operator on second shift.

On December 20, 2011, the employer gave the claimant a written warning for concealing defective parts. Instead of informing his supervisor about some defective work, the claimant put the defective parts in a scrap hopper. The employer warned the claimant that further violations of the employer's policies could result in his termination. Based on the employer's policy, the employer could have discharged the claimant instead of giving him a written warning.

Sometime between late December 2011 and later January 2012, the employer and union representatives talked to the claimant about doing impersonations over the employer's intercom system or leaving impersonations on the employer's phone system. The employer and union representative told the claimant to stop that kind of horseplay. After the claimant was talked to at least twice, he stopped.

On March 6, the claimant washed parts through an oiler. The claimant had done this job before, but the parts he worked with on March 6 were larger. The lead worker showed the claimant with his hands how much room to leave at the end of oiler when he stacked parts. The lead worker

did not tell the claimant in words how much space to leave at the end of the oiler. The claimant understood he was to leave 4 to 5 inches, but lead worker wanted the claimant to leave 6 to 7 inches from the end of the oiler.

When the process first started, it took over three minutes for parts to reach the claimant. During this time, he sang to himself and played some air guitar to pass the time. The claimant had no problems taking parts off as they came to him. The claimant dipped the parts in the oiler and then stacked them on the oiler. The claimant had stacked the parts about 8 inches from the end when the oiler tipped over. The lead worker tried to stop the oiler from tipping over but was not successful. The employer had a mess to clean up after the oiler tipped over.

The employer suspended the claimant on March 7 because the lead worker reported the claimant had been playing air guitar and singing when he was doing this job. The lead worker also reported that he told the claimant to leave 6 to 7 inches at the end of the oiler. Since the oiler tipped over, the employer concluded the claimant had stacked parts to the end of the oiler instead of following the lead worker's instructions. The employer also concluded that as a result of the claimant playing air guitar and singing, he committed horseplay which prevented him from paying attention to the job he had been assigned to do. The employer discharged the claimant on March 8. The employer told the claimant he was discharged because he had been insubordinate, was careless in performing his job, and was engaged in horseplay while performing his work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharged 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 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. 871 IAC 24.32(8).

Based on the employer's investigation and reports from employees who did not testify at the hearing, the employer established business reasons for discharging the claimant. The claimant's testimony as to when he played air guitar, that the lead worker showed him with his hands the distance to stack parts and that there was 8 inches from the end of the oiler when it

tipped over is credible. As a result, the claimant's testimony must be given more weight than the employer's reliance on information from employees who did not testify at the hearing.

The evidence does not establish that the claimant intentionally stacked parts on the oiler in such a way that caused the oiler to tip over. While the employer may not have appreciated the claimant playing air guitar while he waited for parts, the employer had not previously talked to the claimant about this conduct. The facts do not establish that the claimant failed to follow a lead employee's directions to leave 6 to 7 inches at the end of the oiler. The claimant asserted he had stacked parts on the oiler and there was eight inches from the end when the oiler tipped over. If the claimant was careless or negligent this may have contributed to the oiler tipping over, but this isolated incident does not rise to the level of work-connected misconduct.

The employer had justifiable business reasons for discharging the claimant based on previous written and verbal warnings, but the March 6 incident does not rise to level of work-connected misconduct. As a result, the claimant was discharged for reasons that do not constitute a current act of work-connected misconduct. As of March 4, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's April 12, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. As of March 4, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs