

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLOPH G HARTLEY
Claimant

WDC ACQUISITION LLC
Employer

APPEAL 18A-UI-09328-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/19/18
Claimant: Appellant (1)**

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin Code r. 871-24.32 – Discharge for Misconduct

STATEMENT OF THE CASE:

Kelloph Hartley, Claimant, filed an appeal from the September 4, 2018, (reference 01) unemployment insurance decision that denied benefits because he was discharged from work with WDC Acquisitions, LLC for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on September 25, 2018 at 11:00 a.m. Claimant participated. Employer participated through Christina Johnson, Human Resources Assistant. Additional witnesses for the employer were Lance Taylor, Foundry Supervisor, and Crystal Mack, Foundry Superintendent. Employer's Exhibits 1 – 6 were admitted.

ISSUE:

Whether Claimant's separation was a discharge 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 Foundry Worker from August 15, 2007 until his employment ended on August 17, 2018. (Johnson Testimony) Claimant worked Monday through Friday from 6:00 a.m. until 2:30 p.m. (Johnson Testimony) Claimant's direct supervisor was Crystal Mack, Foundry Superintendent. (Johnson Testimony)

Claimant's job duties and training included calibrating machinery. (Taylor Testimony; Exhibit 1) However, in the last month, claimant was assigned to a mixer that he had not been specifically trained how to calibrate. (Claimant Testimony) Claimant relied on a co-worker to calibrate this mixer. (Claimant Testimony) While his coworker was on vacation, claimant filled out the Mixer Calibration Log Sheets, signed the sheets and submitted them to foundry clerk to be entered into the computer. (Mack Testimony; Exhibit 4) Claimant then used the mixer, even though it had not been calibrated. (Mack Testimony)

On August 9, 2018, claimant's log sheet was brought to the attention of the foundry supervisor, because the data recorded did not meet specifications. (Taylor Testimony) By the time the foundry supervisor reviewed the log sheet, claimant had left work for the day. (Taylor

Testimony) The foundry supervisor had the team lead recalibrate the machine. (Taylor Testimony) When claimant's log sheet was compared to the team lead's log sheet, the disparity between the two sets of measurements was significant and caused concern. (Exhibit 4; Taylor Testimony) Employer reviewed claimant's next calibration log sheet dated August 13, 2018 and was concerned because one of the measurements was higher than the specifications in such a way that claimant should have notified his supervisor. (Taylor Testimony) Employer had the mixer recalibrated by the team lead to compare the two workers' measurements and was again concerned about the discrepancy. (Taylor Testimony)

On August 15, 2018, employer had the team lead calibrate the mixer to establish a baseline before claimant arrived at work. (Taylor Testimony) Employer watched claimant as he began his job duties and observed that claimant was "going through the motions" of calibrating the mixer, but was not actually calibrating the mixer. (Taylor Testimony; Exhibit 2) Claimant did not weigh any materials, but entered measurements on the calibration log sheet. (Taylor Testimony; Exhibits 2 & 3) Claimant signed and submitted the log sheet. (Exhibit 4)

WDC Acquisition, LLC produces a very sensitive product used in aircraft. (Taylor Testimony) As a result, there are very rigid specifications. (Taylor Testimony) That is why the machines are calibrated daily. (Taylor Testimony; Mack Testimony) If a machine is not calibrated, it can lead to defects in the final product – the casting. (Taylor Testimony) If there is a defect in a casting, the employer will try to correct it but may have to scrap the entire casting with a value of \$30,000. (Taylor Testimony) Therefore, failure to calibrate the mixer could cause the employer a significant financial burden. (Taylor Testimony) Claimant understood the importance of calibrating the mixer; claimant knew that failure to calibrate the mixer could result in defects in the final product which may have to be discarded. (Claimant Testimony)

Employer has a policy regarding falsification of company records. (Johnson Testimony) The policy is in the employee handbook; claimant received a copy of the handbook. (Johnson Testimony; Claimant Testimony) The handbook provides that falsification of company records could result in immediate discharge. (Johnson Testimony) Employer terminated claimant's employment on August 17, 2018 for falsification of company records. (Johnson Testimony; Exhibits 5 & 6)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying work-related misconduct. Benefits are denied.

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Further, 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). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Claimant did not calibrate the mixer and knew that the measurements he was recording on the log were not correct; yet claimant signed and submitted his log sheets. Claimant knew the importance of calibrating the machine and the impact the lack of calibration would have on the quality of the final product. Claimant's failure to calibrate the mixer was a deliberate violation or disregard of the standards of behavior which his employer had a right to expect from him and a substantial disregard for claimant's duty to his employer. Claimant's actions are disqualifying work-related misconduct. Benefits are denied.

DECISION:

The September 4, 2018, (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs