

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JARON MCCOMBS

Claimant

APPEAL NO: 09A-UI-11929-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEJONG MANUFACTURING INC

Employer

OC: 07-12-09

Claimant: Respondent (2R)

Section 96.5-2-a –Discharge/Misconduct

Section 96.3-7 –Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 12, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 16, 2009. The claimant participated in the hearing. Bonnie DeJong, President and Kevin Lamb, Production Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time laser operator for DeJong Manufacturing from May 23, 2005 to June 18, 2009. The employer has a progressive disciplinary policy that provides a verbal or written warning for the first incident of failure to comply with company policy. A second warning for failure to comply will result in a pay decrease and probationary employment status. The third warning for a failure to comply results in termination. The claimant received his first written warning May 8, 2008, for cutting parts from the wrong material. He did not check the material thickness and did not record/post the required confirmation on his laser nest sheet. Had the claimant followed procedure, he would have caught the error. The error caused a financial loss of \$905.28 and damaged the employer's business relationship with a customer, as the customer was extremely upset due to the missed deadline. A second warning was issued February 13, 2009, and resulted in a \$1.00 pay decrease and 30 days probation after the claimant again cut the parts from the wrong material because he failed to check the material thickness and did not document the same. The claimant's mistake cost the employer a loss of \$1,200.00. This error could have been caught if the claimant had followed procedure and he was advised a third offense would result in his termination. The claimant's employment was terminated after a third violation occurred June 18, 2009. Once again, he willfully failed to check

the material thickness and deliberately chose not to document his procedure, which would have eliminated the error. The final error cost \$800.00, excluding time and material.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct.

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 followed its progressive disciplinary policy and the claimant knew or should have known that his job was in jeopardy after he received the second written warning. The claimant intentionally and repeatedly disregarded the employer's directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to

the employer. The employer has met its burden of proving disqualifying job misconduct. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The August 12, 2009, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs