IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JIMMIE R KEEN
204 MAPLE ST
LYNNVILLE IA 50153-8569

ENGINEERED PLASTIC
COMPONENTS INC
1408 ZIMMERMAN DR S
GRINNELL IA 50112

TED JOHNSON
UAW LOCAL 997
PO BOX 278
NEWTON IA 50208

Appeal Number: 06A-UI-02293-JTT
OC: 01/29/06 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

____
(Administrative Law Judge)

____
(Decision Dated & Mailed)

Section 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant Jimmie Keen filed a timely appeal from the February 17, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 14, 2006. Mr. Keen participated personally and was represented by UAW Local 997 President Ted Johnson. Human Resources Manager Mark Fosnaught represented the employer and presented additional testimony through Second Shift Supervisor Mike Cooms. At the request of the parties, the administrative law judge took official notice of the Agency's administrative file.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jimmie Keen was employed by Engineered Plastic Components as a full-time Machine Press Operator from May 13, 2003 until February 3, 2006, when Human Resources Manager Mark Fosnaught

and Second Shift Supervisor Mike Cooms discharged him. Mr. Keen's duties involved monitoring various automated machines that produced plastic parts. Mr. Keen was responsible for removing excess plastic resin, or "flash," from the finished parts and otherwise monitoring and/or inspecting the quality of the parts produced by his assigned machine. Mr. Keen used a "cutter" or "poker" to remove the excess plastic. The employer provided Mr. Keen with detailed written work instructions in connection with his assignment to operate any particular machine. At the start of each shift, Mr. Keen was required to sign his acknowledgement of the instructions that applied to his assigned machine and the part(s) he was assigned to produce.

The final incident that prompted the discharge occurred on February 2, 2006, when the employer's quality assurance employee discovered that Mr. Keen had packed 108 parts for shipment without properly removing the excess plastic resin from the parts. Mr. Keen had placed his operator number on the finished products to indicate that they were ready to be shipped to the customer. Mr. Keen signed the Spanish version of the work instructions without reading the instructions or being able to read them. An English version of the instructions was available. Later in Mr. Keen's shift, the quality assurance person noticed the excess plastic on the parts. Mr. Keen had not properly inspected the parts. Mr. Keen needed a "poker" to remove the excess plastic and did not obtain one until the quality assurance person pointed out the defective parts.

On January 27, 2006, the employer had reprimanded Mr. Keen for leaving approximately 1000 untrimmed parts for the next shift. The employer policy prohibited leaving work for the incoming shift. Mr. Keen knew that the employer's policy required him to alert appropriate personnel if he fell behind in his work. The employer specifically provided additional personnel for such circumstances. Mr. Keen had repeatedly fallen behind in his work that day and had been given opportunities to get caught up. Mr. Keen left at the end of his shift without communicating to anyone about the unfinished product.

On January 18, the employer had reprimanded Mr. Keen for putting the excess plastic resin from his assigned machine in the wrong resin grinder. Mr. Keen did not have a resin grinder at his machine and used a grinder a few machines away. Mr. Keen noted that the grinder label indicated the grinder was for white plastic. Mr. Keen's machine was generating white plastic. Mr. Keen did not further read the grinder label, which would have indicated whether the excess plastic resin his machine produced matched the resin to be placed in the grinder. Instead, Mr. Keen placed plastic in the machine that did not belong. The employer then used the plastic to make parts that were deemed defective.

Mr. Keen had not been reprimanded prior to the three reprimands he received during the final weeks of his employment. Mr. Keen had gone on a leave of absence and returned in September 2005. After Mr. Keen returned from his leave of absence, he concluded that the employer treated him differently. Towards the end of the employment, Mr. Keen concluded that the employer no longer wanted him in the employment and ceased giving adequate attention to the details of his work. Mr. Keen had decided to quit the employment and was looking for other employment. Mr. Keen had previously demonstrated the ability to perform the work throughout the course of his employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Keen was discharged for misconduct in connection with the employment. 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

Carelessness may be considered misconduct when an employee commits repeated instances of ordinary carelessness. Where the employee has been repeatedly warned about the careless behavior, but continues with the same careless behavior, the repetition of the careless behavior constitutes misconduct. See Greene v. Employment Appeal Board, 426 N.W.2d 659, 661-662 (Iowa App. 1988).

The evidence establishes that Mr. Keen carelessly neglected the details associated with his assigned duties on February 2, despite having demonstrated the ability to understand and attend to those details The evidence further indicates that during roughly the last two weeks of Mr. Keen's employment he carelessly neglected the details associated with his assigned duties three times, despite having demonstrated the ability to understand and attend to those details. The errors Mr. Keen made during his final two weeks of employment were errors one might reasonably expect from a new hire, but not from a seasoned employee who had been performing the same work for almost three years without incident. Mr. Keen's recurrent carelessness resulted from Mr. Keen's erroneous conclusion that the employer no longer liked him, not from lack of ability. Mr. Keen's carelessness and negligence was sufficiently recurrent to amount to willful and wanton disregard of the interests of the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Keen was discharged for misconduct. Accordingly, Mr. Keen is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Keen.

DECISION:

The Agency representative's decision dated February 17, 2006, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

jt/tjc