

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES W HYDEN
Claimant

PRECISION INC
Employer

APPEAL 17A-UI-10256-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/10/17
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 29, 2017, (reference 01) unemployment insurance decision that denied benefits based on his discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on October 24, 2017. The claimant participated and testified. The employer participated through Benefits and Payroll Manager Sue Hileman and Production Supervisor Brian Van Kooten. Employer's Exhibits 1 through 3 were received into evidence.

ISSUE:

Was the claimant discharged 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 shipping loader from August 9, 2005, until this employment ended on September 15, 2017, when he was discharged.

Claimant works the overnight shift. At 2:16 a.m. on September 15, 2017 claimant punched out and left work, without notifying a supervisor, even though he was scheduled to work until 5:00 a.m. Claimant testified he left work early because he was already on overtime and did not have any work he could do. Claimant explained, while he had parts on his line that needed work, he did not have the required paperwork to get the jobs completed. Claimant had previously been instructed that he is not to complete work on parts that did not have the proper paperwork. Claimant further explained, while there was work to be done in the rubber grinding area, he had previously been told by Van Kooten that he was not to do rubber grinding work if he was on overtime. Van Kooten acknowledged he had previously told claimant he did not want him to do rubber grinding work if he was working additional overtime hours for shifts starting on Fridays, but testified this did not apply to hours for shifts starting Monday through Thursday. Van Kooten also testified that, while claimant's assertion that he could not complete the work on the parts on the line due to the lack of paperwork was correct, there was more work coming later in the shift that should have been, but was not, completed prior to the day shift starting.

Hileman testified if claimant wanted or needed to leave early the proper procedure would have been to speak to his lead man first. Claimant acknowledged he understood he generally would need to speak to a lead man prior to leaving, but testified he did not believe he had a lead man. In the time period leading up to this incident, claimant's lead man of ten years left employment and, as far as claimant knew, no replacement had been named. In the three days prior to the incident, claimant had been serving a suspension for an unrelated disciplinary matter. A new lead man was selected during this time, but no one notified claimant of this. Claimant testified, when he left he told the only other individual working in his department he was leaving, but did not report it to anyone else, as he did not know who else to report it to, but did not believe the employer would want to pay him overtime to stand around with no work to do. Later in the day, on September 15, claimant was notified by the employer he did not need to report to work for his next shift, as he had been separated from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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 conduct for which claimant was discharged was merely an isolated incident of poor judgment. Claimant acknowledged that he knew he was supposed to get permission from his lead man if he was going to leave early. Claimant also explained he was already on overtime, did not have work to do, and did not believe he had a lead man to speak to about leaving early. The employer acknowledged, that while a new lead man had been appointed, claimant had not been given this information. Claimant had no prior disciplinary action related to his attendance or leaving work early, and testified he believed the employer would not want to pay him additional overtime when there was no work to be done.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The September 29, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs