

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVE CELSY
Claimant

APPEAL NO: 13A-UI-10528-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DELAVAN INC
Employer

OC: 08/18/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 13, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 9, 2013. The claimant participated in the hearing. Christy McCrum, Human Resources Representative and Joe Reiling, Team Leader, participated in the hearing on behalf of the employer.

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 calibrator for Delavan from November 7, 2011 to August 22, 2013. He was discharged for failing to perform a first piece check.

The employer's policy requires peers to check each other's first piece of any project to verify that it is correct and then the peer must document that he did so on the router that accompanies the production parts. On August 8, 2013, another calibrator/operator approached the claimant for a peer first piece check, in part because the claimant's work area was next to the laser marker machine. Because of the location of the claimant's work area, he was interrupted for peer checks 10 to 12 times per day. When this particular calibrator went to the claimant for a peer check August 8, 2013, the claimant was busy and instead of getting up and checking the part he asked the operator if it was up and on the computer and whether it was correct and the calibrator assured him it was. The claimant checked the laser markings under his scope but did not pull the part up on the computer to match the laser markings by serial numbers but, as the claimant later learned, that program was incorrect due to an error elsewhere, and consequently it would have been wrong even if he had checked the laser markings. The claimant stamped and verified the part was right and continued with his work. The operator's error was caught further down the process, during the last check before the part would have gone to the customer, on August 13, 2013. The employer began investigating each step of the verification process and spoke to each employee who had an opportunity to catch the error. As it gathered

more information the employer decided to send the claimant home with pay August 20, 2013. When the employer interviewed the claimant, he was very honest about the situation and stated he felt rushed because he was performing another job and was interrupted for a first piece check. He admitted that in his rush he did not check the part as thoroughly as he should have and did not catch the fact that parts were missing.

During its investigation the employer learned there was a similar situation involving the claimant in February 2013. He wrote 62 instead of 26, simply transposing the numbers. The claimant's supervisor talked to the claimant about the first piece not being recorded correctly. On February 28, 2013, the claimant's supervisor reviewed the procedure for inspecting the first piece and the claimant indicated he understood. The employer concluded he made an honest mistake and no further disciplinary action was taken.

After considering the previous incident from February 2013 and determining the claimant demonstrated a "pattern" of failing to properly conduct first checks, the employer terminated the claimant's employment August 22, 2013, for failing to conduct the first piece check August 8, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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).

While the claimant failed to properly conduct the first piece check August 8, 2013, and incorrectly recorded a number in February 2013, the administrative law judge does not consider two different incidents, nearly six months apart, a "pattern." The first incident simply involved the claimant accidentally transposing a number, which while incorrect does not show any wrongful intent on the part of the claimant. The claimant admitted he did not complete the first piece check in the manner in which he was trained August 8, 2013, but instead relied on the other operator because the claimant knew he was experienced and good at his job. The employer is correct in stating he chose not to perform an important function of his job and that differentiates this incident from the February 2013 situation. His failure to physically get up and inspect the part as required by the employer's policy August 8, 2013, is misconduct. However, the question is whether that misconduct is disqualifying job misconduct. The administrative law judge concludes it is not. This was an isolated incident of poor judgment on the part of the claimant and as such does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The September 13, 2013, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css