

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ANEL J CASILLAS**  
Claimant

**SJ CONSTRUCTION INC**  
Employer

**APPEAL NO. 15A-UI-01572-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/04/15**  
**Claimant: Respondent (4/R)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated January 30, 2015, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 23, 2015. Employer participated by Steven Santomauro. Claimant failed to respond to the hearing notice and did not participate.

**ISSUES:**

Whether claimant was discharged for misconduct.

Whether claimant is able and available for work.

Was claimant overpaid benefits?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: As employer was the only participant in the hearing, all findings of fact are gleaned employer's testimony. Claimant last worked for employer on December 30, 2014.

Employer discharged claimant on February 5, 2015 because claimant had a number of employer's tools. Employer repeatedly asked claimant to return the tools, both over the phone and during the fact-finding interview for unemployment benefits. Claimant never did return employer's tools. On February 5, 2015, the time that was set by both parties for the return of the tools, employer terminated claimant.

When employer laid off claimant, he discovered the missing tools after he'd cleaned out the work van that claimant used. In addition to missing tools, employer also found drug paraphernalia in claimant's van.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(1)a, (4), and (8) provide:

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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

(4) Report required. The claimant's statement and the 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.

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

Claimant is eligible to receive unemployment benefits during the time of a layoff for lack of work. Employer discovered misconduct on the part of claimant while claimant was on layoff. This misconduct was not remedied by claimant. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra. In contrast, 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning return of employer's tools. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant had no right to the tools, and did not return the tools despite promises to do so, and repeated contacts from employer. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

Said discharge is only effective from the date of February 5, 2015. From this date forward claimant is disqualified from the receipt of unemployment benefits. From the date of claimant's original claim, until February 5, 2015, claimant is on layoff ordered by employer and is eligible for unemployment benefits, as long as other conditions are satisfied. Claimant is deemed to have been overpaid benefits for any benefits received after February 5, 2015. This matter is remanded to the fact finder to determine the amount of overpayment, if any.

**DECISION:**

The decision of the representative dated January 30, 2015, reference 01, is modified in favor of employer/appellant. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements for the period between claimant's original claim and February 5, 2015. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible for the period beginning February 5, 2015. This matter is remanded to the fact finder to determine the amount of overpayment, if any, which would have occurred through payments received after February 5, 2015.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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