

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**ROBYN LAWRENCE**  
Claimant

**APPEAL NO. 18A-UI-04340-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ARCHER-DANIELS-MIDLAND COMPANY**  
Employer

**OC: 02/25/18  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Archer-Daniels-Midland Company (employer) appealed a representative's March 28, 2018, decision (reference 04) that concluded Robyn Lawrence (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 1, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Jeffrey Clark, Plant Manager. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 6, 2017, as a full-time operator three. He signed for receipt of the employer's policies on November 3, 2017, prior to being hired. The handbook states that if an employee can no longer perform his job duties and he is not at an entry level, he will be transferred. If he is at an entry level, he will be terminated.

The employer had many conversations with the claimant about his work performance. The employer repeatedly trained and tested him for understanding. The claimant was never able to apply the knowledge from the training. On December 21, 2017, the employer issued the claimant a written warning for making a packaging error. The employer notified the claimant that further infractions could result in termination from employment. The claimant did not improve after he received the warning. He did not seem to grasp the information.

On February 28, 2018, the claimant made a packaging error in his entry level position and notified the employer. The employer terminated the claimant on March 1, 2018. The employer did not think he made the error on purpose.

The claimant filed for unemployment insurance benefits with an effective date of February 25, 2018. The employer participated personally at the fact finding interview on March 27, 2018, by Sheryl Barley.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. *Huntoon v. Iowa Department of Job Services*, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work

performance was a result of his inability to perform the tasks. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's March 28, 2018, decision (reference 04) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs