

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT R DERUYTER
Claimant

APPEAL NO. 08A-UI-08805-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**POLARIS INDUSTRIES
MANUFACTURING LLC**
Employer

**OC: 12/23/07 R: 01
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 26, 2008, reference 04, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on October 16, 2008. Claimant participated. Employer participated through Kim Phillips and Patrick Gehrke.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time assembler from September 8, 1998 until July 30, 2008 when he was discharged. On July 23 he was having problems with his LP torch used to heat fuel tanks before applying a foil coating and when the group leader Mike Ploughman walked by he told him that the gas was running low and the torch operation was inconsistent. He asked Ploughman to take a look at it, Ploughman determined it needed a new striker and went to maintenance department for the part without shutting down the line. While Ploughman was gone for about ten minutes another five to seven units passed by claimant's work station. Ploughman returned, installed the striker and claimant continued working for another couple of hours before he was called to the office and placed on suspension pending Gehrke's return to work.

The only warnings claimant received before this were about his failure to conduct 100 percent of check backs (verifying the accuracy and completeness of work done on the line before his work station) on September 11, 2007, November 21, 2007, March 28, 2008 and June 4, 2008.

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 § 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). 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).

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, employer incurs

potential liability for unemployment insurance benefits related to that separation. Inasmuch as the lead worker knew of the issue and did not shut down the line while he went to get a replacement part to repair the torch and the prior warnings were not related to the quality of claimant's work, employer 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.

DECISION:

The September 26, 2008, reference 04, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs