

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUAN T NGUYEN

Claimant

APPEAL NO. 16A-UI-10763-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VEYANCE TECHNOLOGIES INC

Employer

OC: 09/04/16

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Luan Nguyen (claimant) appealed a representative's September 30, 2016, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Veyance Technologies (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 17, 2016. The claimant participated through Brandon Nguyen, Interpreter. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

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 August 11, 2014, as a full-time machine operator. The claimant received the employer's handbook. In mid-August 2016, the employer issued the claimant a warning for failure to follow instructions. The employer notified the claimant that further infractions could result in termination from employment.

On September 1, 2016, the claimant was scheduled to take a break at 2:08 a.m. The employer would not allow him to turn off the computer. The machine was not running. When he returned an employee showed him a card that said: 1150. The claimant thought he was supposed to print that many labels. He misunderstood. He was supposed to print 2,000 labels. The employer terminated him on August 28, 2016, for not printing enough labels.

REASONING AND CONCLUSIONS OF LAW:

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

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 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 participate in the hearing and, therefore, provided no evidence of intent at the hearing. The claimant's poor work performance seems to have been due to a lack of communication between the employer and the claimant. At the hearing the claimant presented himself as seeming to be able to converse in English but needing an interpreter. Even with an interpreter, it was difficult for him to understand what information was needed and how he was to convey his answers. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's September 30, 2016, decision (reference 02) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs