

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW W KENT**  
Claimant

**APPEAL NO. 13A-UI-05629-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VERMEER MANUFACTURING COMPANY  
INC**  
Employer

**OC: 04/21/13**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Vermeer Manufacturing Company, Inc. filed a timely appeal from a representative's decision dated May 9, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on June 18, 2013. Claimant participated. The employer participated by Ms. Darla Gabrielson, Human Resource Business Partner, Mr. Roy Wharton, Machine Shop Manager, and Mr. Scott Bruns, Group Leader. Employer's Exhibits A, B, C, D, and E were received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Andrew Kent was employed by Vermeer Manufacturing Company, Inc. from January 17, 2011 until April 19, 2013 when he was discharged from employment. Mr. Kent was employed as a full-time machinist and was paid by the hour. His immediate supervisor was Roy Wharton.

Mr. Kent was discharged on April 19, 2013 for serious violation of the employer's production procedures which resulted in 14 improperly machined end cap pieces causing a \$170.00 per part loss to the company. Another worker had noted that Mr. Kent had machined a center bore on the pieces 20,000th's oversized, a substantial variation from the manner in which the part was to be machined.

A decision was made to terminate Mr. Kent because the claimant had failed to follow the required production procedures when machining the parts. Company policy requires that machinists inspect the first piece that they have machined in a production run to ensure that the equipment is properly set up and that the machined part meets the required specification of the customer. This requirement is ongoing and all employees are reminded of it each week during company meetings. The company also concluded that each part took approximately 14 minutes

to machine allowing sufficient time for Mr. Kent to inspect the parts being machined in order to ensure that they were being properly produced. Mr. Kent admitted not checking the initial piece of the production run and not properly checking the additional parts as they were being produced. The employer considered Mr. Kent's actions to be an intentional failure to follow prescribed work procedures and based upon the claimant's admissions that he had not followed the procedures and the amount of the loss, a decision was made to terminate Mr. Kent from his employment.

It is the claimant's position that he did not intentionally mis-machine the parts but that he had become "complacent" in performing his work and was devoting his attention to other matters such as cleaning up his work area during the production runs.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct that is sufficient to warrant the denial of unemployment insurance benefits. It does.

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 job disqualifying 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 the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984).

Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the evidence in the record establishes that Mr. Kent's failure in this matter went beyond carelessness. Although the claimant did not intend to mis-machine the 14 end caps in question, his failure to follow prescribed and required procedures throughout the production run resulted in a substantial loss to the company that could have been prevented.

Mr. Kent was aware of the strict company rule that required machinists to personally check the tolerances of the first part being machined in a production run to ensure that the following pieces are in conformity to the specification and customer requirements and to ensure that the additional pieces will also be in conformity. This specific job requirement and the necessity of complying with it was brought to the attention of all company employees each week to ensure compliance. The second reasonable expectation of the company was that a machinist would check parts as they were being produced to verify that there were no variances taking place during the production run as the parts were being machined. The employer concluded that Mr. Kent had more than substantial time during the 14 minutes that it took to produce each piece to check other pieces to ensure conformity.

Because the claimant knowingly varied from the required production procedures, his actions were in willful disregard of the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law.

The administrative law judge concludes based upon the evidence in the record that although Mr. Kent did not intend to mis-manufacture the parts, his carelessness or negligence was such of a degree and recurrence as to manifest equal culpability and showed a substantial disregard for the employer's interests and his obligation to the employer. The administrative law judge thus concludes that the employer has sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

- a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment and whether the claimant will have to repay the benefits.

**DECISION:**

The representative's decision dated May 9, 2013, reference 01, is reversed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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