

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN S HORTON**  
Claimant

**APPEAL NO. 11A-UI-04398-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXIDE TECHNOLOGIES**  
Employer

**OC: 02/06/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871IAC 24.32(8) – Current Act of Misconduct

**STATEMENT OF THE CASE:**

John S. Horton filed a timely appeal from an unemployment insurance decision dated March 29, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held April 28, 2011 with Mr. Horton participating. Human Resources Manager Tim Guyer participated for the employer, Exide Technologies.

**ISSUE:**

Was the claimant discharged for disqualifying misconduct?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: John S. Horton was employed as a maintenance worker by Exide Technologies from June 5, 2007 until he was discharged on or about February 2, 2011. He was discharged for not achieving required improvement. There was no last straw leading to his discharge. He had last received a warning in November 2010.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

Iowa Code section 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. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8).

Mr. Guyer testified that there had been no last straw leading directly to Mr. Horton's discharge. The events leading to the warning in November of 2010 were not current acts as of February 2011. The administrative law judge concludes from the evidence in the record that the claimant was discharged for lack of skill. Absent evidence of willful or careless poor performance, no disqualification may be imposed.

**DECISION:**

The unemployment insurance decision dated March 29, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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