

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**James J. Edlin**  
Claimant

**American Ordnance LLC**  
Employer

**DIA APPEAL NO. 21IWDUI2043  
IWD APPEAL NO. 21A-UI-05424**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 3/29/2020  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Claimant, James Edlin, filed an appeal from the February 9, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination he had been discharged “from work on 12/03/20 for violation of a known company rule.” After proper notice, a telephone hearing commenced on April 15, 2021. Claimant appeared and testified. Mike Allbee from Employer did appear to for the hearing, but did not otherwise participate or testify.

**ISSUE(S):**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant James Edlin started working at American Ordnance in October of 2018, packing explosives for military applications. Generally, he worked in the production line, placing C4 into boxes, weighing them, and operating a forklift. On December 3, 2020, he was questioned by company security about some allegedly missing C4. At that time, he was taken off work without pay. Then, on about December 7, 2020, he was called into a meeting with the investigators and informed the C4 had actually all been accounted for. Later, on about December 14, 2020, he was again called back into the office and informed by Mike Allbee of human resources that he was being terminated for writing down the wrong weight on the box. Allbee also confirmed that all of the C4 had been accounted for and that there was nothing missing.

According to Claimant, he simply made a mistake by writing down a wrong weight on a box. He believes it is something anybody could have done. He did not do this intentionally or out of some ill motive. He loved his job and he wishes he was still working there. He had never before been accused of any other similar conduct. He believes he always did an excellent job for this employer. He also testified that he was told by American Ordnance that they did not intend to fight his unemployment claim.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the IWD representative's decision of February 9, 2021, is incorrect. Claimant was not discharged for misconduct. Rather, he was discharged based on a simple error or negligence. Claimant was thus discharged from employment for no disqualifying reason.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits . . .

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. . . .
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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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, it incurs potential liability for unemployment insurance benefits related to that separation. 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000)(fact that claimant, who was a snowplower, had two accidents involving utility lines within three days did not constitute misconduct such as would disqualify claimant from receiving unemployment benefits; there was no evidence that claimant intentionally or deliberately damaged utility lines or violated any traffic laws, and there was uncontroverted evidence that accidents were beyond claimant's control).

I cannot conclude that the Employer has met its burden to establish that Claimant was terminated for misconduct. First of all, Employer did not present any evidence or testimony. Moreover, the best evidence in this record—indeed, the only evidence—is that Claimant was terminated simply for writing down the wrong weight on the box. He was not terminated for stealing or losing any C4, as was the original allegation that led to the investigation. This was simple human error, and not due to any deliberate disregard of the Employer's expectations.

For all of these reasons, I conclude there was no disqualifying misconduct here. IWD's decision to the contrary must be REVERSED.

**DECISION:**

The February 9, 2021 (reference 01) unemployment insurance decision is REVERSED. Claimant is eligible to receive benefits. Any benefits claimed and withheld on this basis shall be paid.



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David Lindgren  
Administrative Law Judge

4/16/2021

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Decision Dated and Mailed

Cc: James Edlin, Claimant (By first class mail)  
American Ordnance, LLC (By first class mail)  
Nicole Merrill, IWD (By email)  
Joni Benson, IWD (By email)