

FINDINGS OF FACT:

The claimant started working for the employer on February 2, 2004. The claimant worked as a full-time laborer. Since March 2004 the claimant worked with knives to remove blade bones. The claimant became qualified to do this job.

The employer transferred the claimant to another job that did not require him to work with a knife. The claimant worked this other job for about seven months. When the employer assigned the claimant to remove blades again, the claimant could not work as quickly as employees who had been doing this for a number of months. The claimant told his supervisor he had problems keeping up with production and asked to be moved to another job. The claimant's supervisor denied the claimant's request to move to another job. The claimant's supervisor also denied the claimant's request to work at a slower speed.

On August 10, 2005, the employer gave the claimant a written warning for poor job performance or for failing to remove any blades on August 10. The employer told the claimant that if his job performance did not improve, he could be discharged.

On August 15, the claimant's supervisor again reported that the claimant failed to do any blade work. The claimant told the employer he could not do this work. Since the claimant had previously performed this work satisfactorily, the employer discharged the claimant for failing to perform his work satisfactorily when the employer knew the claimant understood how to remove blades and in the past, demonstrated he had the ability to do this work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. Since the supervisor did not testify, the claimant's testimony is credible and must be given more weight than the employer's reliance on hearsay information from a person who did not testify at the

hearing. A preponderance of the evidence establishes that even though the claimant had been qualified to remove blades, he had not done this job for over six months. In August, when the claimant was again assigned to remove blades, he tried to do the job but could not work as fast as other employees who had regularly been doing this job. The evidence indicates the claimant's supervisor would not make any accommodations for the claimant even though the employer usually assigns another job to employees if they cannot do an assigned task. A preponderance of the evidence does not establish that the claimant intentionally failed to do the job assigned to him. The claimant did not commit work-connected misconduct. As of August 14, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 1, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of August 14, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf