BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

JAY D STEIN	:	
	:	**HEARING NUMBER:** 11B-UI-15479
Claimant,	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
EATON HYDRAULICS LLC	:	
Employer.		

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Jay D. Stein, was employed by Eaton Hydraulics, LLC from October 4, 1993 through October 4, 2010 as a full-time machinist. (Tr. 2,) Approximately seven years into his employment, the claimant began working on CUNA-50s wherein he was trained to refer to the 'book' containing information on how to set up parts. (Tr. 9) The claimant was to type certain information into the computer on the machine. If he wasn't sure about the information contained in the book, the claimant was to follow the blueprint for the part. (Tr. 10-11) Sometimes the blueprints were not correct. (Tr. 12) If ever there is conflict of instruction, the claimant is supposed to consult with an engineer. (Tr. 10, 12)

Sometime in 2009, the claimant received a verbal warning (Tr. 8-9, 15) for running the wrong part, which prompted his inquiry about "…[setting] up programs with specific part numbers…[for instance]…run a 1040-83…type in 1040-83, and that program just for that part would come up…" (Tr. 15) The employer did not implement this program as they had done in other departments. (Tr. 14-15)

In mid-September (Tr. 7), the employer via the nighttime supervisor (Donna Jollie) issued a written warning to Mr. Stein for "…running the wrong ENBOS, which included a caveat that any further errors would result in discipline up to and including termination. (Tr. 8-9, 13-14)

On Sunday, October 3rd, the claimant had two pieces of 499 C-Pads (Tr. 4, 6) He first checked the book for set up before consulting the blueprint. (Tr. 10) Mr. Stein noted a discrepancy with both sources' instructions. He did not follow the blueprint because he knew they were wrong. (Tr. 11) He did not check with an engineer as there was no one available at that time, so he chose to run the parts according to set up in the book. (Tr. 6, 12) The resulting product was defective in that the holes were larger than they should have been. (Tr. 2-3, 14)

The following Friday, October 8th, Matt Schoning (day shift supervisor) discovered the error and terminated Mr. Stein for failing to correctly run the parts, which resulted in oversized holes. (Tr. 2-3, 6)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2009) provides:

> *Discharge for Misconduct*. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:
>
> The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993).

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 substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The record establishes that the claimant was a longtime employee whose final act involved Mr. Stein's relying on the book set up instructions as opposed to the blueprint instructions to run two parts. His decision was not unusual particularly since the claimant had already deciphered that the blueprint was of no use on the parts in question. According to his unrefuted testimony, blueprint setups and book setups differed on several programs, thus it was not unreasonable for him to disregard the blueprint on October 3rd. His decision to follow the setup by the book in this instance can not be characterized as "…negligence of such degree of recurrence as to manifest equal culpability…" as is found in the legal definition of misconduct. an intentional disregard of the employer's interests.

Mr. Stein had only one other warning in the past year for which the record reflects that he attempted to apprise the employer of the shortcoming in the system. This shortcoming contributed to the claimant's previous mistake back in September, which the employer took no action to remedy. In hindsight, Mr. Stein admitted he should have consulted with an engineer, however, his good faith attempt to get the job done resulted in these mistakes that we find were unintentional.

The employer failed to participate in the hearing to present their disciplinary policy or any evidence to refute the claimant's firsthand testimony. Nor was there any supervisor or engineer with whom Mr. Stein could confer on his shift on October 3rd. In light of these errors and his one other written warning in 17 years of employment, we conclude that the employer failed to establish a pattern of behavior that be considered a substantial and intention disregard of the employer's interests. The employer has failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated January 5, 2011 is **REVERSED**. The claimant was discharged for no disqualifying reason. Accordingly, he is allowed benefits provided he is otherwise eligible.

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John A. Peno

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Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Monique F. Kuester

AMG/kk