

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL G FORD**  
Claimant

**APPEAL NO. 10A-UI-14337-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**3M COMPANY**  
Employer

**OC: 09/19/10**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated October 13, 2010, reference 03, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 30, 2010. The claimant participated. The claimant was represented by Jim Ellefson, attorney at law. Employer participated by Brenda Fugere, human resources, manager, and John Peeler, plant engineering general supervisor. The record consists of the testimony of John Peeler; the testimony of Brenda Fugere; the testimony of Michael Ford; and Employer's Exhibits A through G.

This matter was heard in conjunction with 10A-UI-14336-VST, a reference 01 decision. The administrative law judge believes that two decisions were entered on the identical claim.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case owns and operates a manufacturing facility in Ames, Iowa, that produces sandpaper. The claimant was hired on May 14, 2007. His job was multi-skilled craft person. His job was to maintain electrical and mechanical systems on the plant's machinery. His last day of work was September 22, 2010. He was terminated on September 23, 2010.

The events that led to the claimant's termination began over the Labor Day weekend. The claimant was given a list of projects he was to complete. One of those projects was to pull new cable into an existing conduit. The claimant did not know how to do the job, but he charged ten hours to the project. The claimant then informed the employer that the machine was running. The craftsperson on the first shift following the weekend found that the machine did not run at

all. A subsequent investigation by the employer revealed that the claimant had not terminated the 24-volt power wire in the machine panel. This made it impossible for the machine to run.

A meeting was held with the claimant on September 7, 2010. Jim Peeler told the claimant that an investigation was being conducted and corrective action might result. The claimant had been on a series of performance correction plans. The most recent plan was effective July 7, 2010, and was to go through January 7, 2011. At that time, the claimant was given a three-day unpaid suspension from July 13, 2010, through July 15, 2010. This was the final step in the employer's disciplinary program. The claimant's performance was deemed insufficient in quality and service, initiative and leadership, and attendance. (Exhibit D)

Following its investigation, the employer decided to terminate the claimant because the employer felt the claimant had lied when he informed the employer that the machine was up and running, when it was not.

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

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Misconduct includes repeated acts of carelessness or negligence. Poor performance due to inability is not considered misconduct. See 871 IAC

24.32(1). One of the most fundamental duties owed by a worker to the employer is honesty. An employer can reasonably expect that a worker will be truthful in his interactions with the employer, particularly with respect to the job that is being done for the employer. The employer has the burden of proof to show misconduct.

The administrative law judge concludes that the claimant was terminated for his dishonest reporting concerning the machine that he was asked to repair. The claimant testified that he did not know how to repair the machine, i.e., how to run conduit. He made very little effort to find out how to do the job. Rather than admitting he could not repair the machine, he elected to tell the employer that the machine was running, when that was impossible. The claimant knew he was on a final corrective action and that termination was a possibility given the formal performance correction plan that had been instituted on July 7, 2010. The claimant had a history of poor quality work and service. A reasonable inference from the evidence is that the claimant, in an effort to save his job, made a false statement about the machine's repair. This false statement is a material breach of the duty owed by the claimant to his employer. Benefits are denied.

**DECISION:**

The representative's decision dated October 13, 2010, reference 03, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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