

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LANCE D SATTERLEE
Claimant

BLACKHAWK ENGINEERING LLC
Employer

APPEAL NO. 20A-UI-01187-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/13/19
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 5, 2020, reference 04, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 25, 2020. Claimant participated personally and Mike Oberhauser. Employer participated by LaNae Nielsen and Clark Masteller. Employer's Exhibits 1-10 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 15, 2020. Employer discharged claimant on January 15, 2020 because claimant and other CNC operators received a Quality alert on December 12, 2019 concerning proper cleaning of cross holes on parts. On January 14, 2020 claimant received a verbal warning concerning burrs that had been left in parts claimant worked on. Then, on January 15, at the end of claimant's shift, his manager asked claimant if all of the parts he'd been working on were clean, claimant replied that he'd examined them with a flashlight, and soon thereafter each of the pieces claimant had worked on were found to have shavings and burrs and were unshippable. Employer terminated claimant stating that claimant had intentionally restricted production.

Claimant worked as a CNC operator for employer. Products produced and shipped by employer were rejected by customers if those products had shavings or burrs in them which could affect those products operations. Claimant often produced products that were without shavings and accepted by customers.

Claimant was first made aware of problems when he received a Quality Alert on December 12, 2019. Said Quality Alert explained the need to ensure that parts are without shavings and the steps needed to be taken to remove all shavings. Employer argued that claimant's continued problems with burrs and shavings in products that were supposed to be finished caused employer to issue a verbal warning on January 14, 2020. Within a day of receiving the verbal warning, claimant had problems with shaving in products he'd created on January 15, 2020.

Before the end of claimant's shift, employer asked claimant if he'd checked to make sure the parts were free of burrs and shavings. Claimant said that he had, and further stated he'd used a flashlight to make sure the products were clean. (Claimant stated his reference to clean parts was regarding the previous day's products that he had to remove the burrs that had been left. Claimant stated his declaration of clean parts was not referring to his recent production, but rather the previous batch.) Employer checked claimant's work an hour later and found visible shavings in all of the parts.

Claimant argued that employer did not prove through the pictures forwarded to the administrative law judge that the problematic parts were created by claimant and not someone else. Employer stated that although the pictures didn't show the identification numbers, employer told the administrative law judge that claimant had produced the parts in question.

Claimant also argued that others had dirty parts and were not terminated. Employer stated that others had been terminated for the same actions.

Claimant additionally argued that he was not given a needed piece of equipment. Employer argued said piece of equipment had nothing to do with the cleaning of the parts.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id. In this matter, although claimant attempts to draw into question whether he'd created that parts, employer sufficiently matched the identification numbers on the parts with claimant's production numbers.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning ensuring parts are deburred and free from shavings. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant's actions were financially detrimental to employer costing money and use of resources to correct claimant's negligent actions after employer had warned claimant regarding the mistakes. Claimant's actions are not seen to be intentional as employer argued, but rather are seen as carelessness or negligence of such degree of recurrence as to manifest equal culpability as if they were intentional. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified from the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated February 5, 2020, reference 04, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn