

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 05A-UI-01919-SWT  
OC: 01/16/05 R: 02  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 18, 2005, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 10, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Corey Walker, attorney at law. Bernie Johnston participated in the hearing on behalf of the employer. Exhibits One through Six were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a press operator in the employer's gasket manufacturing operation from June 23, 1997 to January 18, 2004. The claimant received a verbal warning on March 30, 2004, for shearing the wrong material for an order. On June 3, 2004, the claimant received a written verbal warning after he had run an order using the wrong

material on May 27. He was counseled on September 16, 2004, after he set up the die in the machine wrong on September 15. On October 6, 2004, the claimant received a written warning for incidents on September 16 and October 5, where the claimant had produced some gaskets but had failed to record the amount of material he had used in the inventory system. He was informed that any further infraction in six months would result in a suspension.

On January 13, 2005, the claimant mistakenly produced the wrong part for a work order. On January 17, 2005, the claimant was required to produce cover bands for an order. The die used to produce the part can be used to make two parts that are identical except for the length, which is controlled by an arm that is used with the die. He mistakenly ran the longer part for a short time until he noticed his error and stopped and measured the part. He immediately notified his supervisor about his error and was told to switch to producing the correct part, which the claimant did.

On January 18, 2004, the claimant was suspended for the January 13 incident and discharged for the January 17 incident. The employer discharged the claimant for repeated instances of unsatisfactory workmanship. The claimant's errors were not the result of any deliberate conduct by the claimant to disregard or harm the employer's interests, but instead were due to a failure to perform his work carefully. The evidence does not establish that the errors were due to the affects of the medication the claimant was taking for a work-related injury.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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, (8) provide:

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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(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 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 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant suggested that the mistakes were due to the medication he was taking, but without any medical evidence, this has not been sufficiently proven.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. For repeated negligence to equal willful misconduct in culpability requires a high degree of carelessness so that it could be said that the work was being performed recklessly. The claimant's conduct was negligent but did not rise to the level of willful misconduct in culpability.

#### DECISION:

The unemployment insurance decision dated February 18, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/tjc