

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES D DAWSON
Claimant

NSK CORPORATION
Employer

APPEAL 17A-UI-10542-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/17/17
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

NSK Corporation (employer) filed an appeal from the October 6, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination Charles D. Dawson (claimant) was discharged for poor work performance which is not disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on November 2, 2017. The claimant participated personally. The employer participated through Business Unit Coordinator James Harris and Human Resources Assistant Manager Katie Purdy. The department's Exhibit D1 was admitted with no objection.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an Assembly Operator beginning on August 11, 2014, and was separated from employment on September 21, 2017, when he was discharged.

The employer has a progressive disciplinary policy that includes a verbal warning, written warning, disciplinary layoff, and discharge. The claimant received a verbal warning in October 2014, a written warning in April 2015, and a written warning in July 2016, all for attendance. On November 1, 2016, the claimant was placed on disciplinary layoff due to a poor work quality because he did not perform the required quality checks. On February 2, 2017, the claimant was again placed on disciplinary layoff but for a safety violation when he opened an electrical cabinet. He was told at that time any further violations of the employer's policies would result in his discharge.

On September 20, 2017, the claimant lost a quality master that was used to verify piece size of components that were assembled into parts. He looked for the master, but was unable to find it. He reported to the supervisor of the next shift that the master was lost and went home. Other employees stayed to help look for the master and it was eventually found assembled into a bearing.

Business Unit Coordinator James Harris conducted an investigation and determined the claimant had left before the master was found which violated the employer's common business practices. The requirement to stay and look for the master is not written in any of the employer's policies. The claimant's conduct on September 20, without any prior disciplinary warnings, would not have resulted in discharge. The claimant was discharged as he was on the final step of the disciplinary process.

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$2,762.00, since filing a claim with an effective date of September 17, 2017, for the six weeks ending October 28, 2017. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a first-hand witness available for rebuttal. At the time of protest, the employer did provide specific information related to the end of the claimant's employment and his previous disciplinary actions. (Exhibit D1.)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the

burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which the claimant was discharged was an isolated incident of poor judgment and the employer has not established that it had a known policy related to an employee's responsibility to stay and look for a lost quality master. As the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Warnings for violations of the attendance and safety policies are not similar to leaving before a lost quality master was found and the employer's simple accrual of a certain number of warnings counting towards discharge does not establish repeated negligence or deliberation and is not dispositive of the issue of misconduct for the purpose of determining eligibility for unemployment insurance benefits. Benefits are allowed.

As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

DECISION:

The October 6, 2017, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn