

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMOTHY J HUBBARD**  
Claimant

**APPEAL NO. 09A-UI-15567-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AERON ADVANCED MANUFACTURING  
LLC**  
Employer

**OC: 12/14/08**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 6, 2009, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on November 18, 2009. Claimant Timothy Hubbard participated. Russ Reynolds, General Manager, represented the employer. Exhibit One was received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Timothy Hubbard was employed by Aeron Advanced Manufacturing as a full-time injection technician from August 7, 2009 until September 9, 2009, when Russ Reynolds, General Manager discharged him for negligent operation of his assigned machine and erroneous documentation of quality check information.

Mr. Hubbard appears to have somewhat below average cognitive ability. Mr. Hubbard attended school into his senior year, but did not graduate. Mr. Hubbard reads at a fourth or fifth grade level. When Mr. Hubbard was in school, he received special education services throughout his school day.

The final incident that triggered the discharge occurred on September 8, 2009. Mr. Hubbard was operating a machine that made plastic lids for pop cans. Mr. Hubbard was inexperienced in operating the machine. Mr. Hubbard understood he was responsible for manufacturing good parts that could be used for intended purpose and that defective or contaminated lids could not be used for the intended purpose. Mr. Hubbard knew that he was responsible for documenting whether the lids were good or bad. On the shift in question, Mr. Hubbard's machine malfunctioned throughout the shift and generated primarily defective or contaminated parts. There was no supervisor on duty. Mr. Hubbard contacted a more senior coworker for

assistance, but that coworker did not resolve the issue. On the quality assurance documentation, Mr. Hubbard recorded that the parts he checked were without defect. The shift produced a large quantity of product the employer had to discard. The employer deemed Mr. Hubbard's erroneous quality check entries an intentional falsification of a record and discharged Mr. Hubbard from the employment.

### **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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on

which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Having had a chance to speak with and question Mr. Hubbard, the administrative law judge concludes that Mr. Hubbard's cognitive ability was a mitigating factor. The weight of the evidence indicates that Mr. Hubbard lacked the problem solving skills necessary to resolve the situation he faced on September 8. Additional mitigating factors were the absence of a supervisor on duty and the absence of someone else who could assist Mr. Hubbard with the malfunctioning machine. The evidence fails to support the allegation that Mr. Hubbard was trying to mislead the employer through the quality check documentation. The evidence indicates instead that Mr. Hubbard may not have fully appreciated the quality documentation process or his role in it. The evidence does establish negligence, but the negligence is limited to his one shift. There is not a pattern of negligence so recurrent as to indicate a willful or wanton disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Hubbard was discharged for no disqualifying reason. Accordingly, Mr. Hubbard is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Hubbard.

**DECISION:**

The Agency representative's October 6, 2009, reference 04, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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