

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON W BARBEE
Claimant

APPEAL NO. 16A-UI-09842-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PECH OPTICAL CORPORATION
Employer

**OC: 08/14/16
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jason Barbee (claimant) appealed a representative's August 31, 2016, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Pech Optical Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 27, 2016. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. A message was left for the employer. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 16, 2010, as a full-time technician. The claimant received the employer's handbook. On January 13, 2016, the employer issued the claimant a written warning for taking too many breaks. The employer notified the claimant that further infractions could result in suspension or termination from employment. From that point on, the claimant did not take any extra breaks.

On January 26, 2016, the employer issued the claimant a written warning for attendance. All the claimant's absences were due to medical issues and properly reported. In August 2016, the employer walked up to the claimant and two co-workers while they were working. The employer said they should not take any extra breaks. The claimant was confused by this because he had not taken any extra breaks. He had gone to the restroom and gotten a drink of water but this did not count as a break.

In 2016, the claimant was training to be an operator. The claimant thought his supervisor was harassing him to work faster as he learned the job. On August 11, 2016, the employer terminated the claimant for taking extra breaks. The employer did not tell the claimant when he had taken the extra breaks. The claimant did not take any unauthorized breaks after his warning on January 26, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative’s August 31, 2016, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs