

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS D HEMBRY
Claimant

APPEAL NO. 08A-UI-05698-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROCKWELL COLLINS INC
Employer

**OC: 05/04/08 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Thomas Hembry filed an appeal from a representative's decision dated June 9, 2008, reference 01, which denied benefits based upon his separation from Rockwell Collins, Inc. After due notice was issued a hearing was held by telephone on July 7, 2008. The claimant participated personally. The employer declined to participate.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from February 10, 2008 until May 7, 2008 as a computer test technician. Mr. Hembry was employed on a full-time basis and was paid by the hour. His immediate supervisor was Judy Smith.

The claimant was discharged on May 7, 2008 three days before the expiration of his probationary new employee status. At the time of discharge Mr. Hembry was informed that he was being terminated because his production numbers for tested units was not up to company standards. The claimant was also informed that he was being discharged because he had used 30 hours of vacation in March 2008 and that that number exceeded the permissible number that was going to be allowed under the provisions of the company's bargaining agreement that was effective May 2008. Although Mr. Hembry questioned the employer as to why his authorized vacation was being used as a basis for his termination, he received no response.

Prior to being discharged the claimant had received no warnings or counselings and was unaware that his production numbers were unsatisfactory.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Hembry was discharged for misconduct in connection with the employment. It does not.

The evidence in the record establishes that Mr. Hembry was discharged without prior warning three days prior to the expiration of his new employee probationary status. Prior to being discharged the claimant had received no warnings or counselings and was unaware that his production was unsatisfactory. Mr. Hembry was unaware that utilizing 30 hours of approved vacation would lead to his discharge several weeks later.

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 insurance benefits. 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 1992).

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.

871 IAC 24.32(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

For the reasons stated herein, the administrative law judge concludes that the claimant's discharge took place under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 9, 2008, reference 01, is hereby reversed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs