

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KEITH D HOUGHTON**  
Claimant

**ALL ACQUISITIONS LLC**  
Employer

**APPEAL 16A-UI-06622-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/15/16**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 9, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for wanton carelessness in connection with his work. The parties were properly notified of the hearing. A telephone hearing was held on July 1, 2016. The claimant, Keith D. Houghton, participated. The employer, All Acquisitions, L.L.C., participated through Michelle St. John, human resources supervisor; and Jeff Bletner, manufacturing engineer. Employer's Exhibits A through J were received and admitted into the record without objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a welder from July 7, 2014, until this employment ended on May 13, 2016, when he was discharged.

On May 13, 2016, Bletner learned that claimant failed to weld-stamp a frame he completed and failed to have a buddy-check completed on the frame. Additionally, Bletner testified, the frame was not completed correctly. Earlier that morning, Bletner had reviewed the weld stamp process with employees and confirmed with all employees that each employee should stamp a welding project to verify it was correct and then have a buddy review the project as well. Bletner testified claimant had received verbal coaching for failing to follow the weld-stamp process in the past. Claimant had also received warnings in the past for failing to adhere to quality standards and failing to follow instructions. Claimant was never told his job was in jeopardy due to welding performance or process concerns.

Claimant testified he weld-stamped the project but had put his stamp in the incorrect location, as he was not used to working on large projects like this. Once he completed this project, he left the part over by Andy, a coworker, for the buddy-stamping step. Bletner claims Andy was one of the two employees who brought the project to his attention.

## REASONING AND CONCLUSIONS OF LAW:

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

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).

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.

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 assess points or impose discipline up to or including discharge for the incident under its policy.

Training or general notice to staff about a policy is not considered a disciplinary warning. A warning for unrelated quality or instruction-following issues is not similar to a weld-stamping error and the employer's simple accrual of a certain number of warnings, including performance and attendance, 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.

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.

Claimant had never been warned for a weld-stamping error in the past. Even if he had received verbal coaching on the weld-stamping process, he was not aware his job was in jeopardy for failing to follow the process. Bletner's announcement that weld-stamping was a "zero tolerance" offense alone is not sufficient to warn claimant. The conduct for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the specific issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

**DECISION:**

The June 9, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Elizabeth Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/pjs