

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**AMBER R NIEDERKLOPFER**  
Claimant

**APPEAL 22A-UI-06104-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VERMEER MANUFACTURING CO INC**  
Employer

**OC: 02/13/22  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview

**STATEMENT OF THE CASE:**

Vermeer Manufacturing Company Inc, the employer/appellant, filed an appeal from the March 4, 2022, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on April 19, 2022. The employer participated through human resource manager. Ms. Niederklopfers did not participate in the hearing. The administrative law judge took official notice of the administrative record. Employer's Exhibit 1 was admitted into evidence.

**ISSUES:**

Did the employer discharge Ms. Niederklopfers from employment for disqualifying job-related misconduct?  
Was Ms. Niederklopfers overpaid benefits?  
If so, should she repay the benefits?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Niederklopfers began working for the employer on October 4, 2021. She worked as a full-time machining technician – plate. Her employment ended on November 3, 2021.

After Ms. Niederklopfers accepted the job but before her first day on the job, the employer required Ms. Niederklopfers to complete a pre-employment assessment at an outside clinic. Ms. Niederklopfers completed the assessment paperwork and mistakenly listed her position as maintenance technician instead of machining technician. The outside clinic completed the assessment and cleared Ms. Niederklopfers to work as a maintenance technician.

On her first day at work Ms. Niederklopfers told the employer that she has a medical condition that means she cannot be around strong magnets. The machining technician – plate job requires exposure to high velocity magnets. The employer began investigating the matter. The

employer learned about Ms. Neiderklopper's mistake from its investigation. The employer completed its investigation and concluded that Ms. Neiderklopper would not have been medically cleared to work as a machining technician – plate based on her medical condition. The employer terminated Ms. Neiderklopper's employment as of November 3, 2021 for this reason.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the employer discharged Ms. Neiderklopper from employment for no disqualifying reason.

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 Iowa Supreme Court has held that this definition accurately reflects the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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 the claimant from employment, 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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 employer's policy or rule 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.

In this case, Ms. Niederklopper mistakenly wrote down the wrong position for the pre-employment assessment and was cleared to work based on this error. When the employer learned of the mistake, the employer terminated Ms. Niederklopper's employment because she could not do the job. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986). Here, the employer has failed to establish intentional misconduct on the part of Ms. Niederklopper. Benefits are allowed.

Since Ms. Niederklopper is eligible for benefits, the issues of overpayment and chargeability are moot.

**DECISION:**

The March 4, 2022, (reference 01) unemployment insurance decision is AFFIRMED. The employer discharged Ms. Niederklopper from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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April 28, 2022  
Decision Dated and Mailed

dz/scn