

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID R MASTBERGEN
Claimant

APPEAL NO. 09A-UI-03822-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**VERMEER MANUFACTURING
COMPANY INC**
Employer

**Original Claim: 01/18/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated March 3, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 25, 2009. The claimant participated personally. The employer participated by Laura Briggs and Orville Shewry. Exhibit One, pages 1-31, was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant last worked for employer on February 20, 2009.

The claimant was discharged because the claimant did not meet the standards the employer had set for him. The employer had provided evaluations and notified the claimant a number of times they wanted his quality and quantity of work to improve. On February 27 and June 19, 2008, the claimant was given written evaluations and told he needed to improve. On August 18, 2008, the claimant was given a warning about operating a machine in an unsafe manner. The claimant was evaluated in September of 2008 and January of 2009 and the employer noted the claimant needed to improve his production. The claimant tried to improve his production. He was given the option of transferring to different machines and to take a demotion. He declined and continued to try to improve his performance.

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 gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence fails to establish that the claimant was discharged for an act of misconduct when claimant could not meet the quality and production standards of the employer. The employer provided written warnings and provided clear expectations of what standards of production they expected of the claimant. The claimant could not meet them. The claimant tried to meet the standards but could not. The inability of an individual to perform a job to the satisfaction of the employer is not misconduct.

DECISION:

The decision of the representative dated March 3, 2009, reference 01, is affirmed. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/kjw