

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVE R GORDON
Claimant

APPEAL NO. 12A-UI-15202-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DM PLASTICS ACQUISITION LLC
Employer

OC: 11/25/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated December 20, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 29, 2013. The claimant participated personally. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Steve Gordon.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was a full-time process technician. He was hired by the employer in December 2002. His last day of work was November 26, 2012. He was terminated on November 26, 2012.

The claimant was terminated for poor job performance and specifically incidents that occurred on November 16, 2012; November 18, 2012; and November 20, 2012. On November 16, 2012, he was cited for failing to turn on the robot monitoring. The claimant was unable to turn on the robot monitoring because it did not work. On November 18, 2012, he had turned off a press that was making bad parts. The second shift turned on the press and continued to make bad parts. He was charged with having made all of the bad parts. The final incident on November 20, 2012, was due to a problem with a router.

The claimant did not know that his job was in jeopardy prior to his termination.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes poor job performance due to incapacity or inability. Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer has the burden of proof to establish misconduct.

The claimant is eligible for unemployment insurance benefits. There is no evidence of misconduct in this record. The employer failed to participate in the hearing and provide testimony or other evidence that the claimant's poor job performance was volitional or deliberate

on his part. The claimant credibly testified that the incidents that led to his termination were not due to fault on his part. At best the claimant did not perform his job in a satisfactory manner. This is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated December 20, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs