

BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319

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DAVID J HAASE

Claimant

and

JEWELL MACHINE & FABRICATION

Employer

HEARING NUMBER: 19BUI-05888

EMPLOYMENT APPEAL BOARD  
DECISION

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

**A REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.5-2-A

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Employment Appeal Board adopts and incorporates as its own the administrative law judge's Findings of Fact with the following modifications:

The Employer requires its manufactured parts to be 100% deburred and 100% visually inspected prior to being sold to customers for use in engine components and hydraulic equipment. (34:48-35:25) Failure to properly inspect these parts would not only negatively impact quality control within the company, but have dangerous ramifications for the final use of defective parts. (1:08:50-

The Claimant received a copy of the personnel handbook at the beginning of his employment for which he read and signed in acknowledgment of receipt. (1:00:33-1:01:25; Exhibit 10) The Employer has a 4-step progressive disciplinary policy that provides termination shall result after an employee has received three warnings and a suspension for unsatisfactory work.

The Employer warned the Claimant multiple times about his failure to visually inspect and correct flawed parts. (27:00) The Claimant was responsible for "100% ensuring parts were free from burrs/chips and 100% blowing parts off with air gun after deburring..." in accordance with his in-process inspection (IPI).

On January 30, 2019, the Employer issued a verbal warning to him regarding his failure to properly complete his IPI, then falsifying the information indicating he had done so. (39:30-39:58; Exhibit 7)

On June 4, 2019, the Claimant was issued a written warning for substandard work, failure to follow instructions and carelessness in performing his job duties. That warning also included a caveat that "[a]ny further incidents will result in additional disciplinary action up to and including termination." (Exhibit 6)

On June 13<sup>th</sup>, defective parts were discovered. On June 17<sup>th</sup>, the Employer suspended the Claimant pending further investigation, which later yielded 41 defective parts were, in fact, a result of Mr. Haase's failure to complete his IPI. (33:44-34:16-34:30; Exhibits 4-5)

When the Claimant returned to work on June 20<sup>th</sup>, the Employer retrained him on proper way to 100% remove burr and 100% visually inspect parts per his IPI. (1:11:35) The Employer had also responded to his complaint by improving the lighting in the area. (1:16:17-1:16:35) The Claimant knew his job was jeopardy based on his final written warning. (1:50:15) By the end of his shift, the Claimant still had defective product in his bin out of the 180 parts he worked on. The Employer terminated him for having substandard work, i.e., his fourth company violation regarding work performance.

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

Iowa Code Section 96.5(2)(a) (2013) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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.

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The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665, (Iowa 2000) (quoting *Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events.

The Claimant admitted receiving and reading Employer's personnel handbook that contained the Employer's policies. He knew what was expected of him in terms of completing his in-process inspections, and the ramifications for missing defective parts, and failing to correct them. The record shows the Claimant repeatedly made the same mistakes in failing to properly conduct INIs. Although his first warning, which also included falsification of information (January of 2019), may be considered too remote to be considered in the final act, it is not irrelevant when determining the magnitude of the Claimant's June 20<sup>th</sup> violation that ultimately led to his termination. Taking all his warnings into consideration, we see recurring strikes for "substandard work, failure to follow instructions, and carelessness." Both parties acknowledge the Claimant received additional training when he returned from suspension. Both acknowledge the lighting issue was addressed. Yet, the Claimant continued to fail to conduct a proper INI resulting in defective parts. The Claimant's repeated failure to comply with the Employer's reasonable directives could have caused serious harm, i.e., liability, to the Employer's interests, and that of its customers should those defective parts not have been caught in time. The court in *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990) held that continued failure to follow reasonable instructions constitutes misconduct.

In addition, it is not wholly unreasonable for us to conclude the Claimant's behavior was "...carelessness or negligence of such degree of recurrence as to manifest equal culpability...or...[demonstrates] an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer...", which is included in the very definition of misconduct. See, 871 IAC 24.32(1)"a", supra. Having had three warnings (verbal, written, and final written warning accompanied with suspension), the Claimant knew his job was in jeopardy should he have additional infractions given the Employer's 4-step disciplinary policy for work performance. Thus, it was incumbent upon him to take extra care in performing his work. Based on this record, we conclude the Employer satisfied its burden of proof.

**DECISION:**

The administrative law judge's decision dated August 23, 2019 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, he is denied benefits until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

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Kim D. Schmett

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Ashley R. Koopmans

**DISSENTING OPINION OF JAMES M. STROHMAN:**

I respectfully dissent from the decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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James M. Strohmman