

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID J LYNCH
Claimant

APPEAL NO: 12A-UI-11963-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

A Y MCDONALD MFG CO
Employer

OC: 09/02/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated September 26, 2012, reference 01, that held the claimant was not discharged for misconduct on August 28, 2012, and benefits are allowed. A telephone hearing was held on November 26, 2012. The claimant participated. Sam Lynch, HR Representative, and Rob McCullough, Factory Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUES:

Whether claimant was discharged for misconduct in connection with employment.

Whether claimant is overpaid unemployment benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on May 9, 2000, and last worked for the employer as a full-time machinist on September 4, 2012. He received the employer policies in the Union Contract and he was subject to progressive discipline. After one year, the discipline is reduced by one level from the previous year.

The employer issued progressive discipline to claimant with a final warning on July 19, 2010, disciplinary layoff on February 22, 2011, and January 17, 2012. The most recent discipline involved carelessness where claimant miss-loaded a part (casting backwards) that caused the machine to crash.

On August 28 the claimant miss-loaded a part into the machine jaws and walked away. The machine crashed causing \$1,536.43 damage. After a group review and in the presence of a union representative the employer discharged claimant for a repeated act of carelessness in light of prior discipline.

Claimant has been receiving benefits on his current unemployment claim.

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 administrative law judge concludes the employer has established claimant was discharged for misconduct in connection with employment on September 4, 2012. Repeated act of carelessness in light of prior discipline is contrary to a standard of behavior the employer has a right to expect.

The employer followed the Union contract by issuing progressive discipline to claimant that included layoffs and a final warning. He had recently been issued a disciplinary layoff (suspension) for carelessness. A union representative was present when claimant was discharged and there was no grievance. Job disqualifying misconduct has been established for repeated act of carelessness.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault,

the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has been receiving benefits before being disqualified in this matter, the overpayment issue is remanded to Claims for a decision.

DECISION:

The department decision dated September 26, 2012, reference 01, is reversed. The claimant was discharged for misconduct on September 4, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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