

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STEVEN RAIMO

Claimant

GMT CORPORATION

Employer

APPEAL NO. 19A-UI-08573-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/07/19

Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 21, 2019, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on August 21, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on November 22, 2019. Claimant Steven Raimo registered a telephone number for the hearing, but was not available at the registered number at the time of the hearing. Jamie Kramer, Human Resources Manager, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1, 2 and 3 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of documenting the employer's participation in the fact-finding interview.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.
Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Steven Raimo was employed by GMT Corporation as a full-time CNC machinist from January 21, 2019 until August 21, 2019, when Darrell McLaury, Production Manager, discharged him from the employment. Mr. Raimo was assigned to the overnight shift and his work hours were 10:00 p.m. to 6:00 a.m. Mr. Raimo's work week began on Sunday evening and ended on Friday morning. Production Supervisors Travis Woodward and Jeff Jacobs were Mr. Raimo's immediate supervisors.

The final incident that triggered the discharge occurred on August 16, 2019. During that shift, Mr. Raimo failed to put the CNC machine in "background edit" when he changed out a tool between projects. The omitted step between projects caused the CNC machine to cycle in the wrong mode for the next project, caused a portion of the CNC machine to slam into the side of the part being manufactured, and caused the CNC machine to seize up. The employer's maintenance staff were unable to repair the CNC machine and had to summon a third-party

repair technician to rebuild the that malfunctioning portion of the CNC machine at a cost of \$10,000.00 to \$12,000.00. The employer learned it would be without use of the CNC machine for a week or two and would be unable to generate revenue with the machine during that time.

In making the decision to discharge Mr. Raimo from the employment, the employer considered two earlier incidents. On March 21, 2019, the employer learned that its customer, John Deere, had returned a defective part that Mr. Raimo had milled on February 8, 2019 while he was in training on the first shift. The disciplinary document describes the issues as follows: "The part was misloaded on the hob and the alignment gauge would not site correctly on the part." The disciplinary document indicated that the particular feature was to be checked on every part. Mr. Raimo disagreed with the employer's decision to issue the reprimand. Mr. Raimo emphasized that he been in training at the time the part was milled and asserted that he should have been provided help to verify that he was milling the part correctly. On March 26, 2019, John Deere returned a defective part that Mr. Raimo had milled on March 9, 2019. The second returned part had the same part number and the same issue as the earlier defective part. On March 29, 2019, the employer issued two separate reprimands to Mr. Raimo for the two separate milling errors.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in the record establishes a discharge for no disqualifying reason. The three incidents that factored in the discharge involved ordinarily carelessness and/or negligence. The first incident occurred less than three weeks into the employment, while Mr. Raimo was still in training and needed extra support to ensure he performed the work correctly. The second, identical incident occurred a month later. The employer addressed the first and second incident with Mr. Raimo on March 29, 2019. Mr. Raimo thereafter performed his work duties in a satisfactory manner for four and a half months before the final incident of carelessness occurred. Prior to the August 16, 2019 incident that resulted damage to the CNC machine, Mr. Raimo had not made a similar error. Though the employer was understandable concerned with the consequences of the error, the error itself did not rise above ordinary negligence. The evidence fails to prove a pattern of carelessness and/or negligence that would demonstrate a willful and wanton disregard of the employer’s interests. Mr. Raimo is eligible for benefits, provided he meets all other eligibility requirements. The employer’s account may be charged for benefits.

DECISION:

The October 21, 2019, reference 01, decision is affirmed. The claimant was discharged on August 21, 2019 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn