

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

Appeal Number: 04A-UI-01951-DWT  
OC 01/18/04 R 04  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

NATHAN P MCMAHON  
507 NINTH AVE  
DEWITT IA 52742

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

CUSTOM-PAK INC  
86 – 16<sup>TH</sup> AVE N  
CLINTON IA 52632

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Nathan McMahon (claimant) appealed a representative's February 13, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Custom-Pak, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 12, 2004. The claimant participated in the hearing with his witness, Mike Barchman. Steve Reistroffer, a facilitator, and Vicki Rixen appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on April 23, 2003. He worked as a full-time machine operator as a manufacturing team member. On January 12, the claimant and his supervisor talked about problems the claimant had with his machine and his production during his shift. The claimant knew they would talk about the problems he had during this shift the next day.

On January 13, 2004, the claimant reported to work as scheduled. The claimant did not object to leaving work almost immediately because the employer did not have enough work for him to do. Mike Barchman was also asked to leave early because of a lack of work.

When the claimant left the parking lot, his tires hit either a wet or icy spot two different times when he was leaving. This caused his tires to spin the first time and squeal the second time. Reistroffer saw the claimant leave the parking lot and heard his squealing tires. Reistroffer concluded the claimant was upset and left the employer's parking lot in an unsafe and reckless manner. When Barchman left, his tires also spun when he hit an icy or wet patch.

Even though the employer had never observed the claimant do anything like this before, on January 14, 2004, the employer discharged the claimant for driving recklessly on January 13, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had business reasons for discharging the claimant. The evidence does not however, establish that the claimant intentionally spun or squealed his tires when he left work on January 13, 2004. The evidence does not establish that he was upset when the employer asked him to go home because there was no work for him to do. The facts do not establish the claimant intentionally drove his vehicle out of the employer's parking lot in such a way that he committed work-connected misconduct. As of January 18, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 13, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of January 18, 2004 the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/s