

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY J BUELOW
Claimant

APPEAL NO. 09A-UI-16013-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAN KRUSE PONTIAC INC
Employer

OC: 09/20/09
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 14, 2009 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on December 1, 2009. Claimant participated. Employer participated through fixed operations supervisor, Jerry Albert and owner Doug Warthan.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a body shop technician and was separated on September 23, 2009. On September 21 he scratched a quarter-panel when the light weight metal trim roof molding above the side window flipped out of his hand. He attempted to repair the scratch but when he could not, he reported it to Albert. Albert told him to “take care of it” and he did. On September 17 he was warned in writing after leaving a dent in a door panel he was repairing. He had been instructed to leave the dent near back of the door because the paint department did not want to blend that far, so he repaired only the forward dent. On another occasion employer noticed a ripple in the primer after both claimant and the painter had worked on the piece. Normally the painter would provide a double check for body work. He refused to sign the write up until a union representative was able to read it but a union steward signed the document for receipt only. Another written warning was issued the same day for scratching a vehicle upon reassembly and allegedly not reporting it to management until the customer arrived. However, claimant contacted shop manager Bill Thill 45 minutes before the customer came in and notified him that the paint was still soft when he had been instructed to reassemble the grill, which had to be slid over the bumper, resulting in a nick to the new paint on the bumper. On September 10 he visually checked a strut for straightness when Thill asked him to do so but Thill did not ask him to put the vehicle on the alignment machine since that would have taken a substantial amount of time over the job estimate to install a hubcap, take a

fender off, and repair a door. Verification of strut straightness is not possible by visual examination alone and alignment is traditionally a mechanic's job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425

N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was merely the result of an awkward part flipping out of his hand and was not the result of either malintent or carelessness. Employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The October 14, 2009 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs