

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH W HOFFMAN
Claimant

APPEAL NO: 14A-UI-11555-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

OC: 10/12/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Kenneth W. Hoffman (claimant) appealed a representative's October 31, 2014 (reference 01) decision that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with The Hon Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 1, 2014. The claimant participated in the hearing. Sandra Linsin of Employer's Edge appeared on the employer's behalf and presented testimony from one witness, Cherie McClusky. 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

After a prior period of employment with the employer through a temporary employment firm, the claimant started working directly for the employer on March 5, 2012. He worked full time as a CNC machine operator in the employer's Muscatine, Iowa office furniture manufacturing facility, working on an overnight shift from 10:00 p.m. to 6:00 a.m. His last day of work was the shift from the evening of October 15 into the morning of October 16, 2014. The employer discharged him on the morning of October 16. The reason asserted for the discharge was poor attitude and job performance.

The claimant had been given a first and final warning on June 12 for an instance where the employer considered the claimant to have made a rude remark to a manager and refused to report for a meeting, although the claimant denied refusing to report for the meeting, as he maintained he had not been informed where the meeting was to be held. The incident which

triggered the employer's decision to discharge the claimant occurred on the morning of October 8, 2014. Right at about 6:00 a.m. a coworker pointed out to the claimant that a part was not the correct thickness. The employer asserted through second-hand information that the coworker related that the claimant had told the coworker that he had "not even looked at" the specifications for the part and that the issue was "not his problem, he was going home." The claimant denied that he had failed to look at the specifications or told the coworker that he had failed to look at the specifications, but he did acknowledge that the part had been produced to an incorrect thickness, likely by trying to work too quickly. He acknowledged that he had told the coworker that the person coming on with the next shift would have to deal with it as his shift was over, but he denied phrasing this as if he did not care but rather was attempting to be apologetic that this was the case. While he might have been able to stay over into the next shift to deal with the issue had he requested permission, this had not been the normal practice and it had not occurred to him to do so.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the conclusion that the claimant had shown poor attitude and job performance on the morning of October 8. The employer asserted through at least second-hand testimony that the claimant had displayed a disregard for even attempting to follow the work specifications and that he had displayed a callous response as to the need to correct the problem. The employer relies exclusively on the second-hand account from the claimant's coworker; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the coworker might have been mistaken, whether he is credible, or whether the employer's witness might

have misinterpreted or misunderstood aspects of the coworker's report. Under the circumstances of this case, the claimant's handling of the situation on the morning of October 8 was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper, supra*. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute and the claimant is not disqualified from benefits.

DECISION:

The representative's October 31, 2014 (reference 01) decision is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/can