

**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**

**AJIT V JANI
3622 BEAVER AVE APT #1
DES MOINES IA 50310**

**CENTRAL IOWA MACHINING CO INC
16195 LAUREL ST
WAUKEE IA 50263**

**Appeal Number: 04A-UI-12733-DWT
OC: 10/17/04 R: 02
Claimant: Respondent (1)**

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, 4th 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.

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.

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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Central Iowa Machining Company Incorporated (employer) appealed a representative's November 19, 2004 decision (reference 02) that concluded Ajit V. Jani (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 20, 2004. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer.

The employer contacted the Appeals Section after the hearing had been closed and the claimant had been excused. The employer did not know if anyone on the employer's behalf had previously contacted the Appeals Section as the hearing notice instructed the parties to do.

Even though the employer did not provide a control number, a request to reopen the hearing is addressed in this decision. Based on an issue of whether to reopen the hearing, the administrative record, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

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

FINDINGS OF FACT:

The claimant started working for the employer on April 14, 2004. The employer hired the claimant as a 90-day probationary machine operator.

During the course of his employment, the employer tried to show the claimant how to do his job satisfactorily. Even though the claimant tried to do his job satisfactorily, he was unable to meet the employer's standards. At the end of his probation, the employer decided the claimant's work was not satisfactory and ended his employment. The claimant's last day of work was July 14, 2004.

After the employer appealed the decision that held the claimant eligible to receive unemployment insurance benefits, hearing notices were sent to both parties on December 2, 2004. The hearing notice indicated a telephone hearing would be held on December 20 at 11:00 a.m. Hearing instructions informed the parties that when the party received the hearing notice, they were required to call the Appeals Section and provide the phone number in which to contact the party on December 20, 2004. The notice also warned the parties that the judge would not call on the day of the hearing if the party did not call the Appeals Section as instructed.

The claimant contacted the Appeals Section prior to December 20. The record does not indicate that anyone on the employer's behalf called the Appeals Section prior to the hearing. Although the employer was given an opportunity to provide proof that the employer had called the Appeals Section prior to the hearing, the employer did not provide this information to the Appeals Section. The first time the employer contacted the Appeals Section after receiving the December 2 hearing notice was December 20 after the hearing had been closed and the claimant had been excused.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The evidence establishes the first time the employer contacted the Appeals Section was on December 20, but after the hearing had been closed and the claimant had been excused. The evidence further indicates that no one on the employer's behalf read or followed the hearing instructions. As a result, the employer did not establish good cause to reopen the hearing.

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 record establishes the employer had compelling business reasons for discharging the claimant. The purpose of hiring a person under a probationary period allows the employer time to evaluate a new employee's work performance and determine whether the new employee's work performance meets the employer's standards. The claimant did not meet the employer's work performance expectations, and the employer discharged him at the end of his 90-day probation.

The record shows the claimant never met the employer's work performance expectations. Unsatisfactory performance does not, however, amount to work-connected misconduct. The record does not indicate that the claimant intentionally or substantially disregarded the employer's interests. Instead, the claimant worked to the best of his ability. The record does not establish that the claimant committed work-connected misconduct. Therefore, as of October 17, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The hearing cannot be reopened because good cause to reopen the hearing was not established. The representative's November 19, 2004 decision (reference 02) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of October 17, 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/smc