

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

JOEL D JAMESON  
945 SHADY LANE  
DUBUQUE IA 52001

DECKER PRECISION MACHINING INC  
PO BOX 9  
PEOSTA IA 52068-0009

Appeal Number: 04A-UI-01031-DT  
OC: 12/21/03 R: 04  
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, 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.

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 is 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Decker Precision Machining, Inc. (employer) appealed a representative's January 20, 2004 decision (reference 01) that concluded Joel D. Jameson (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 19, 2004. The claimant participated in the hearing. Randy Decker appeared on the employer's behalf and presented testimony from one other witness, Michelle Jaeger. 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?

FINDINGS OF FACT:

The claimant started working for the employer on January 31, 2000. He worked full time as a machine operator on the second shift (2:30 p.m. to 12:30 a.m., Monday through Thursday) in the employer's machine shop. His last day of work was December 17, 2003. The employer discharged him on December 18, 2003. The reason asserted for the discharge was that his school schedule was not working out and he was not putting in enough work hours.

In approximately January 2003 the claimant had expressed interest in moving to a first shift position. When no transfer opportunity became available, in September 2003 he decided to obtain further education. He described his proposed class schedule to Mr. Decker, the president and owner, and explained he would need to get off early at least a couple nights per week. He understood that he had obtained Mr. Decker's consent. As a result, his actual hours worked dropped from 40 to between 30 and 32 per week.

On October 28, 2003, the employer gave him a warning regarding his productivity, as Mr. Decker did not believe that the claimant was using the time he was working as productively as he had when working the full 40 hours. On or about November 20, Mr. Decker told the claimant he was not working enough, that he needed to be putting in 40 hours. The following week, the week of Thanksgiving, the claimant worked the maximum hours available (16.0 hours). The following week, he worked only 31.5 hours. There was some discussion that Mr. Decker wanted the claimant to work 40 hours on first shift the week of December 8, but the claimant could not work first shift at that time due to his school schedule, and because of final examinations that week, he could only work 17.5 hours on the second shift. The following week, the claimant had worked 23.25 hours as of December 17.

The administrative law judge takes administrative notice that on January 23, 2004, the Agency issued another representative's decision (reference 02) that approved the claimant for training for a period of time, and relieves the employer's account from charge during that period.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue 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 questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 Section 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).

Iowa Code Section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer's interest, or
    2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is that he was not working enough hours. Under the circumstances of this case, the claimant's inability to work the desired hours at the times needed was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence or a good faith error in judgment or discretion. While the employer had a good business reason for replacing the claimant, 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 January 20, 2004 decision (reference 01) is affirmed. 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.

ld/kjf