

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

MARK J DURMAN JR  
310 ALMIRA ST  
ELGIN IA 52141

DURA BRAKE SYSTEMS LLC  
DURA AUTOMOTIVE SYSTEMS  
2791 RESEARCH DR  
ROCHESTER HILLS MI 48309-3575

Appeal Number: 05A-UI-05589-LT  
OC: 07-04-04 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, 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 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)

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the May 18, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 14, 2005. Claimant did participate with his mother, Kathryn Durnan, who also acted as his representative. Employer did not participate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time parts washer on the assembly line through April 15, 2005 when he was discharged. Employer accused claimant of throwing parts and not working fast enough. Employer hired claimant through RISE, an agency for physically and mentally disabled adults, and knew that claimant could not work as fast on the line. Claimant was working as fast as he

safely could. Some odd sized parts fell on the floor from the conveyor when claimant raked parts. After he emptied the tub he picked the parts off the floor. He did not throw parts. Employer had not warned claimant his job was in jeopardy for any reason. Claimant's mother works there also and affirms that parts do fall off the belt. Diane Soderstrom worked with him for seven years prior to the latest assignment and he was helpful to coworkers and did become frustrated but was easily calmed. Claimant wrote on the dry erase board a request for a larger tub for his parts so production did not slow down. Someone erased tub and inserted "head." He also was made to wait longer than others for a fork truck to take his parts, which caused him to fall behind in production.

More recently, a certain group of female coworkers repeatedly provoked him and would report him to management when he yelled at them. Eight days after claimant reported a coworker, Marcus, to management for making a sexual remark to claimant ("don't get your dildo stuck [in the jack brace] or I will not help you get it out."), Marcus was made his supervisor and concocted allegations that caused claimant to be fired. Marcus is also socially involved with one of the women who tease and provoke claimant.

#### 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 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 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).

An employer may discharge an employee for any number of reasons or no reason at all, 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 (as well as other issues such as wrongful termination and discrimination based upon disability) related to that separation. Inasmuch as Marcus concocted the false allegations in order to end claimant's employment, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. Not only did employer not prove misconduct, had claimant quit for reasons of harassment, retaliation and discriminatory treatment based upon his disability, it would have been for good cause attributable to the employer. Benefits are allowed.

#### DECISION:

The May 18, 2005, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

dml/sc