

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHAD M WEIR-GOLLADAY**  
Claimant

**APPEAL NO. 10A-EUCU-00199-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE HEALEY WERKS CORPORATION**  
Employer

**Original Claim: 10/05/08  
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated March 11, 2010, reference 06, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 30, 2010. The claimant participated. The employer participated by Craig Hillinger, owner. The record consists of the testimony of Craid Hillinger; the testimony of Chad Weir Golladay; and Employer's Exhibits 1 through 7.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a company that does restoration on primarily European exotic sports cars, such as Jaguars and Austin-Healys. The claimant was hired on December 27, 2009, as a part-time engine builder. Engine building on these types of cars requires expertise; and when the claimant was hired for the job, he believed he possessed the requisite skills. The claimant, however, could not perform the job to his employer's satisfaction. He was unable to do the math and tedious measuring required for the job. He was terminated on February 6, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes mere inefficiency and failure in good performance as the result of inability or incapacity. The employer has the burden of proof to show misconduct.

There is insufficient proof of misconduct in this case. The evidence in this case established that the claimant did not have the training and experience to rebuild engines to exacting demands required for exotic European sports cars. Failure in good performance as the result of inability or incapacity is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

There was evidence given during the hearing that the claimant is attending school and may have other employment. This raises the question of whether the claimant is able and available for work. The able and available issue was not listed as an issue in this case. The claims section may wish to examine this issue further when determining if the claimant is eligible for benefits.

**DECISION:**

The representative's decision dated March 11, 2010, reference 06, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw