

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAYNE HUISKAMP**  
Claimant

**APPEAL NO. 08A-UI-07471-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RAMBRO MODIFICATIONS**  
Employer

**OC: 07/20/08 R: 04  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Rambro Modifications (employer) appealed an unemployment insurance decision dated August 13, 2008, reference 01, which held that Payne Huiskamp (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 3, 2008. The claimant participated in the hearing. The employer participated through owner Wade Brown. 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:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time technician/motorcycle mechanic from November 1, 2007 through July 21, 2008. He was discharged for poor attendance and poor quality work. The final incident occurred on July 19, 2008, when the claimant promised a customer that the work would be done on his vehicle but the work was not done and the claimant did not work that day. The employer was unable to reach him until late that afternoon and others had to finish his work. The claimant's work quality was sloppy and the employer often had to redo the claimant's work. Additionally, the claimant was not reliable. He was often tardy or absent, and anytime the employer had to leave the shop, the claimant also left and no work was done while the employer was gone. No formal written warnings were issued, but the employer issued numerous verbal warnings; however, no specific dates were provided. The employer testified the warnings were given on an almost daily basis.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

Iowa Code § 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.

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 substantial and 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).

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer participated in the hearing but failed to provide any specific or detailed evidence except for the last incident. However, the

employer's witness somewhat contradicted the employer's testimony on the final incident. The evidence does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. The employer failed to meet its burden. Work-connected misconduct has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated August 13, 2008, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw