

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

JEFF C BLAKE
PO BOX 472
WAUKEE IA 50263

CENTRAL IOWA MACHINING
COMPANY INC
16195 LAUREL ST
WAUKEE IA 50263

Appeal Number: 05A-UI-05543-H
OC: 04/24/05 R: 02
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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant, Jeff Blake, filed an appeal from a decision dated May 18, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held in Des Moines, Iowa, on June 13, 2005. The claimant participated on his own behalf and with a witness, Greg Smith. The claimant was represented by Attorney Don Wine for part of the hearing. The employer, Central Iowa Machining Company, Inc. (CIMCO), participated by Manager Dave Hoffman.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jeff Blake was employed by CIMCO from March 3, 2003 until April 21, 2005. This was his second period of employment during which he was a full-time machinist working the first shift.

The claimant never received any written or verbal warnings regarding the quality of his work or any problems with his production of parts. The employer indicated "everyone makes mistakes" that result in parts having to be reworked or remade in order for the customer's specifications to be met. Mr. Blake did receive a two-day suspension in February 2005 for harassing two employees on the second shift. He had been spoken to in March 2005 for attendance by Manager Dave Hoffman.

On April 15, 2005, the claimant began the process of the "second" operation on some parts for a customer. He produced less than ten before the end of his shift. He had set up the machine to mill the parts and the second shift worker continued using the same machine and settings. It was later discovered the parts did not meet the specifications of the customer and all 45 had to be remade as they could not be salvaged. This was discovered by Mr. Hoffman on April 21, 2005, when they were to be shipped. He discharged the claimant that day for the mistakes on that run. The employer also took into account a run the claimant had produced on another part for the same customer a month before, but nothing was ever said to him about it because the parts could be reworked and were salvageable.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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 to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The employer produced evidence of only two errors during the claimant's entire period of employment and no evidence of any warnings given to him about unsatisfactory work performance and job quality. Two errors do not indicate a degree of negligence so substantial as to constitute misconduct, especially in light of the employer's admission that "everyone makes mistakes." The employer has failed to meet its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of May 18, 2005, reference 01, is reversed. Jeff Blake is qualified for benefits provided he is otherwise eligible.

bgh/pjs