

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAMPHAY THONGSAKOUNH
Claimant

APPEAL NO. 07A-UI-09548-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

OC: 09/09/07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 3, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 29, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Chris Lo. Eric Johnson participated in the hearing on behalf of the employer with witnesses, Jered Schroeder, Bill Lehner, and April Ostrem.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as an assembler from February 14, 2000, to August 27, 2007. She was informed and understood that under the employer's work rules, falsifying company records was grounds for discipline.

As part of the claimant's job duties, she was required to perform a quality control check each hour of the parts she was working on. After completing the check, the claimant was required to make an entry on a process control check sheet indicating whether the part had passed or failed inspection.

The claimant worked on August 14, 2007. One of the parts being produced had four pilot holes drilled by a drill press. At some point, one of the four drill bits used to drill the pilot holes broke. Afterward, one of the pilot holes was too shallow to meet specifications. The claimant performed the check as scheduled at 11:50 p.m. and 1:50 a.m. but failed to notice that the fourth pilot hole was too shallow. She marked "passed" on the process control check sheet. She believed the units had passed inspection and did not deliberately falsify information on the check sheet.

The next morning, a quality audit found some units produced on the claimant's shift that did not meet specifications. The broken drill bit was found and 35 parts had to be re-drilled. The

claimant was questioned about the quality checks when she returned from vacation on August 21, 2007. She said that she had performed the checks. She demonstrated the inspection process to her supervisors. After being questioned multiple times, the claimant said that maybe she had signed okay but had not done the tests.

The employer discharged the claimant on August 29, 2007, for falsifying company records.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

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).

No willful and substantial misconduct has been proven in this case. I believe the claimant when she testified that she had performed the tests on August 14. At most, the evidence establishes negligence by the claimant due to her not recognizing that one of the four pilot holes was too shallow. The evidence, however, does not establish repeated negligence to the degree that it would show conduct equal to willful misconduct in culpability.

DECISION:

The unemployment insurance decision dated October 3, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs