

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEANA M VALLEJO
Claimant

APPEAL NO: 07A-UI-03528-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PHOENIX CLOSURES INC
Employer

OC: 03/04/07 R: 12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Deana M. Vallejo (claimant) appealed a representative's March 30, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Phoenix Closures, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 23, 2007. The claimant participated in the hearing. Greg Gabrielsen, the employer's representative, appeared on the employer's behalf. Mark Slattery, the interim plant manager, Teri Deroin, a human resource specialist, and Tim Duran, a third shift supervisor, testified on the employer's behalf. During the hearing, Employer Exhibits One through Six were offered and admitted as evidence. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 17, 2004. The claimant worked as a full-time mold technician. Duran was the claimant's supervisor for the last six months of her employment.

During the claimant's employment, she received several written warnings. On March 31, 2006, the employer gave her a written warning for excessive absenteeism. (Employer Exhibit Six.) On October 22, 2006, the employer gave the claimant a written warning for hurting her ankle when she did not follow the employer's safety guidelines. (Employer Exhibit Five.) The claimant received a written warning on December 5 for taking two excessively long breaks on November 27. The claimant fell asleep and was on one break for 50 minutes. The claimant had a 38 minutes break later in her shift. (Employer Exhibit Four.) The claimant received a written warning on January 30, 2007, for refusing to follow a supervisor's instructions. (Employer Exhibit Three.) On February 27, the employer gave the claimant a letter verifying the conditions of the mediation agreement between the claimant and Duran. (Employer Exhibit Two.)

On March 1, the claimant was covering machines when another employee was on a break. During this time, two pallets were filled and had to be taken to the mold room. The claimant had to take the pallets to the mold room so another pallet could be filled. The claimant took the first pallet to the mold room. Before she returned to her workstation, two co-workers asked if she had seen movie. The claimant talked to the co-workers a couple of minutes. The claimant was away from her workstation for about ten minutes. When she returned, the employee she had been covering for was already back at the workstation.

The claimant noticed a machine was plugged up and immediately shut it down. The other employee contacted Duran. The machine that was plugged up had caused before and after this incident. The machine sometimes plugged up even when the claimant was present. After Duran was called, he had to wait awhile for a sky jack to charge. While he waited, Duran went to work another piece of equipment. When Duran came back, he worked on the machine for a while and became frustrated. He told the claimant and another employee he was going on a break. After Duran finished his break, he came back and worked on the machine again. The machine that was plugged up was down for about three hours.

When the employer investigated this incident, the employer concluded the claimant stopped and talked to co-workers for about ten minutes. The claimant acknowledged she was away from the machine for approximately ten minutes, but only talked to two co-workers a couple of minutes. The employer gave the claimant a written warning on March 7 for leaving her workstation for ten minutes on March 1 talking to co-workers. The employer concluded the claimant's action in being away from her workstation for ten minutes caused a machine to be down for three hours. The employer also concluded the claimant did not follow proper procedures when she was away from her workstation talking to two co-workers. The employer believed the claimant violated the employer's procedures.

The employer discharged the claimant because of the employer's progressive disciplinary policy. Although the employer attempted to work with the claimant to improve her job performance, relationship with other employees, and helped her understand the employer's guidelines, the employer concluded the March 1 incident established that the claimant would not follow the employer's guidelines. As a result, the employer had no choice but to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's

interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

In accordance with its progressive disciplinary policy, the employer established justifiable business reasons for discharging the claimant. Since the two employees the claimant talked to did not testify, the claimant's testimony that she only talked to them about two minutes must be given more weight than the employer's reliance on unsupported hearsay information from people who did not testify at the hearing.

The facts establish the claimant had to take the pallet to the mold room. The employer asserted the machine plugged up because the claimant was gone from her workstation. The facts do not support this assertion because the machine plugged up when the claimant was present and it is not known at what point the machine plugged up. If the machine plugged up when the claimant took the pallet to the mold room, the claimant did nothing wrong. Or did the machine plug up when she talked to co-workers? The answer to this question is not known. The amount of time the machine was down was beyond the claimant's control because she had nothing to do with getting it unplugged or operational again.

Under the facts of this case, the evidence does not establish that the claimant intentionally or substantially disregarded the employer's procedures on March 1. Therefore, the claimant did not commit work-connected misconduct. As of March 4, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 30, 2007 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of March 4, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefit paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs