

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY J HARRIS
Claimant

APPEAL NO. 076A-UI-02941-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENNOX MFG INC
Employer

**OC: 11/19/06 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Lennox Mfg., Inc. (employer) appealed a representative's March 21, 2007 decision (reference 03) that concluded Tammy J. Harris (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reason. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 9, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the administrative record 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 March 10, 2003. The employer's policy informs employees that if they receive four written warnings during an 18-month time frame, the employer may discharge the employee.

On March 30, 2006, the employer gave the claimant a written warning for leaving her work area without authorization. The claimant was looking for insulation tape. On August 9, 2006, the employer gave the claimant a verbal warning for excessive absenteeism from April 23, 2006 through August 8, 2006. On August 14, 2006, the claimant received a written warning for using her cell phone at work. On January 27, 2007, the claimant received a written warning, her third one, for excessive absenteeism. Between April 7, 2006, and February 9, 2007, the claimant was absent 40 hours. The employer coded these absences as personal business.

On February 9, the claimant notified the employer she was unable to work because she was ill. The employer considered this absence another violation of the employer's attendance policy or that the claimant was excessively absent from work. The employer gave the claimant her fourth written warning for not reporting to work on February 9, 2007. The employer discharged the claimant on February 21, 2007, because she had received four written warnings within an 18-month time period.

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 § 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).

The employer followed its termination policy and discharged the claimant for receiving four written warnings in an 18-month time period. The incident that led to the claimant's employment separation was her February 9 absence. On February 9, 2007, the claimant properly notified the employer she was ill and unable to work this day. Inability to work does not constitute work-connected misconduct. In this case, the claimant did not intentionally fail to work as scheduled on February 9. Instead, she was ill and unable to work. The claimant did not disregard the employer's interests because she notified the employer she was ill. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 25, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 21, 2007 decision (reference 03) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 25, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employers' account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw