

**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**

**TERRIE L HOFF
531 JONES ROAD
EVANSDALE IA 50707**

**ENGINEERED PRODUCTS CO
2940 AIRPORT BLVD
WATERLOO IA 50703-9627**

**Appeal Number: 04A-UI-09385-DWT
OC 08/08/04 R 03
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 are 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:

Terrie L. Hoff (claimant) appealed a representative's September 1, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Engineered Products, 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 September 22, 2004. The claimant participated in the hearing. Nancy West, the human development manager, appeared on the employer's behalf. 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 February 22, 2001. The claimant worked full time as a production assembler. Her supervisor was Barb Dettmering.

During the course of her employment, Dettmering gave the claimant several warnings for failing to get along with her co-workers. The employer warned the claimant about incidents of this nature in July 2002, October and December 2003. On April 1, 2004, Dettmering gave the claimant her final written warning for again failing to get along with her co-workers. The employer warned the claimant that if there were any more problems of this nature, she could be discharged.

On August 10, 2004, Dettmering told the claimant to make sure everyone stayed in line. On August 10 the rotations were not going smoothly. When the claimant saw a temporary employee, Lea, move before the bell sounded to change work areas, the claimant told her she needed to stay in her area until the bell sounded. Although Dettmering concluded the claimant tried to intimidate the new employees by looking over her glasses, the claimant always looks over her glasses to see something close up. At the end of her August 10 shift, Dettmering suspended the claimant because "they had talked about this before." The temporary employee complained about the way the claimant treated her that day. Dettmering did not tell the claimant what the problem was or what had been reported to her.

On August 11, 2004, the employer discharged the claimant. The employer told the claimant she was discharged for again being rude to her co-workers and for failing to get along with her fellow employees.

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 had business reasons for discharging the claimant. The employer's witness had no first-hand knowledge about any of the incidents in which the claimant's supervisor concluded the claimant did not get along with her co-workers. The employer's reliance on information and conclusions from a supervisor who did not testify at the hearing cannot be given as much weight as the claimant's testimony. Therefore, a preponderance of the evidence does not establish that the claimant was rude or treated a co-worker in an inappropriate way on August 10, 2004. The employer did not establish that the claimant committed a current act of work-connected misconduct. Therefore, as of August 8, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 1, 2004 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of August 8, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b