

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VERONICA GARCIA
Claimant

APPEAL NO. 10A-UI-08641-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

OC: 05-09-10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 11, 2010, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 4, 2010. The claimant participated in the hearing. Carolyn Cross, Personnel Manager; Wes Dicken, Safety and Facility Coordinator; and Kevin Freybler, Production Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production operator for Van Diest Supply from October 27, 2009 to May 10, 2010. On Friday, May 7, 2010, Safety and Facility Coordinator Wes Dicken observed a live plant video that showed the claimant working on the fusilade fill line with her face shield up and safety glasses on. He left his area to talk to the claimant and on his way met Production Manager Kevin Freybler, and they both went to the claimant's work area to discuss the situation with her. The claimant was processing and filling jugs with fusilade, which is a corrosive, and thus she was required to wear her face shield as well as safety glasses, which she had on. She had moved her face shield partially up on her head while she was counting jugs. Mr. Freybler told her that was not the correct way to wear her face shield and the claimant immediately complied and pulled her face shield down over her face. Mr. Dicken included the incident in his nightly report that eventually made its way to Personnel Manager Carolyn Cross Monday afternoon, May 10, 2010. On the advice of management, Ms. Cross called the claimant that day and notified her that her employment was terminated for a safety violation. The claimant did not have any previous safety violations but did file a workers' compensation claim against the employer April 15, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 of proving disqualifying misconduct. 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). While the claimant moved her face shield halfway up her face to count the jugs she was filling, which was a violation of the employer's policy, this was a single safety violation. She had never been warned before and, consequently, this was an isolated incident of misconduct. Although the employer has the right to discharge any employee for any reason at any time, the violation must constitute disqualifying job misconduct in order for the employee to be denied unemployment insurance benefits. In this case, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 11, 2010, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw