

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY J MARTIN
Claimant

APPEAL NO. 08A-UI-06229-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEERE & COMPANY DELAWARE
Employer

**OC: 06/01/08 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ashley Martin (claimant) appealed a representative's June 27, 2008 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Deere & Company (employer) for repeated tardiness in reporting for work after being warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 19, 2008. The claimant participated personally. The employer participated by Ryan Melloy, Manager of Industrial Relations.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on February 5, 2007, as a full-time assembler. The employer told the claimant in orientation that she was to be clocked in and in her area ready to start work by 8:30 p.m. The employer issued the claimant a warning on September 5, 2007, for recklessly driving a fork truck. On September 12, 2007, the employer issued the claimant a warning and a three-day in-plant suspension for being careless and causing damage to the employer's property. On October 18, 2007, the employer issued the claimant a warning and a two-week in-plant suspension for being careless and causing damage to the employer's property. The employer issued the claimant a warning and 30-day suspension on February 26, 2008, for sleeping on the job.

The employer had a meeting with the claimant on April 2, 2008, when the claimant returned to work after her 30-day suspension. The employer told the claimant that she would be terminated for any further infractions of any kind. The claimant was a few minutes tardy in appearing for work nine times from April 2 through May 29, 2008. The claimant was not feeling the best due to pregnancy, but she was able to work. On May 29, 2008, the claimant was a few minutes late for work. The employer terminated the claimant on June 5, 2008, for repeatedly failing to follow instructions in the performance of her work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions regarding carelessness in the workplace and appearing for work on time. The claimant's disregard of the employer's interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's June 27, 2008 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw