

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

ELENITA G CELINDRO
105 SUNLAND WAY
FOREST CITY IA 50436

WINNEBAGO INDUSTRIES
PO BOX 152
FOREST CITY IA 50436-0152

Appeal Number: 06A-UI-00185-RT
OC: 12/26/04 R: 02
Claimant: Appellant (1)

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 is 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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Elenita G. Celindro, filed a timely appeal from an unemployment insurance decision dated December 22, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on January 23, 2006, with the claimant participating. Lorna Zrostlik, Personnel Recruiter, and Barry Bendickson, Security Manager, participated in the hearing for the employer, Winnebago Industries. Employer's Exhibits One through Three were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One through Three, the administrative law judge finds: The claimant was employed by the employer as a full time advanced assembler and fabricator from March 30, 1998 until she was discharged on November 22, 2005. The claimant was discharged for being in possession of controlled substances on the employer's property. On November 22, 2005, the employer conducted a random security sweep of all vehicles in the employer's parking lot. The employer used its own canine as well as three canines from police departments to sniff all of the vehicles. One of the canines pointed out or hit on the claimant's vehicle. The claimant was the sole owner and operator of the vehicle. The claimant was summoned and was repeatedly asked if the employer and the police officers assisting in the sweep could search her car and the claimant continued to consent. A search of her car revealed a powdered substance testing positive for methamphetamine and two prescription drugs, Atarax and Zanaflex, both prescription medications to which the claimant had no prescriptions. The claimant was then confronted in the office of Barry Bendickson, Security Manager, and she admitted to him that she had used methamphetamines before coming to work on both November 21, 2005 and November 22, 2005. The claimant was then discharged. The employer has a very specific policy as shown at Employer's Exhibit Two prohibiting the possession, use, or selling of any controlled substance on company property or while in possession of a company motor vehicle. The policy further provides that vehicles on the employer's property are subject to being searched by the employer for, among other reasons, to find illegal items such as drugs, alcohol, or weapons. The claimant received a copy of this policy and signed an acknowledgement also shown at Employer's Exhibit Two. The claimant was aware of the employer's policy. A statement by Randy Haukoos, a lieutenant in the employer's security department, appears at Employer's Exhibit One. A statement by Barry Bendickson, Security Manager and one of the employer's witnesses, and Andrew Klein, Police Officer in the Forest City Police Department, appears at Employer's Exhibit Three. Both statements relate to these matters. Criminal charges were filed against the claimant but they are still pending and have not been resolved.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agreed, and the administrative law judge concludes, that the claimant was discharged on November 22, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witnesses credibly testified that a consensual search of the claimant's vehicle pursuant to a security sweep by the employer, revealed methamphetamines and two prescription pills, one Atarax and Zanaflex. The testimony of the employer's witnesses is supported by statements at Employer's Exhibits One and Three. The employer has a very specific policy prohibiting the possession of any controlled substance on the employer's property and further provides for the search of employee vehicles on the employer's property, for, among other reasons, to find illegal items such as drugs. The claimant received a copy of this policy and signed an acknowledgement thereof and was aware of the policy. The claimant seems to concede that the drugs were found in her vehicle, but, at least initially, the claimant seems to deny that methamphetamine was found in her vehicle. However, at fact-finding, the claimant seemed to admit that both the drugs and the methamphetamine were found in her vehicle. In any event, the administrative law judge concludes that the claimant's testimony at the hearing was not credible. She equivocated many times on the answers to questions posed by the administrative law judge. The administrative law judge concludes that the employer and the police assisting the employer's sweep of all of the vehicles in the employer's parking lot and in particular, the claimant's car, found both prescription pills and methamphetamine in the claimant's vehicle. The administrative law judge further concludes that all of the searches were consensual. Finally, the administrative law judge concludes that such possession of methamphetamine and prescription drugs in the claimant's car violated the employer's policies and was further a deliberate act constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and is disqualifying misconduct.

The claimant denies that the drugs were hers or that she knew how the drugs got there. However, the claimant did testify that she owns the car by herself and she was the operator.

The administrative law judge concludes that, at the very least, there is a rebuttable presumption that the claimant was in possession of the methamphetamine and prescription pills because she was the owner of the vehicle and the operator of the vehicle. See State v. Atkinson, 620 N.W.2d 1, 3 (Iowa 2000). The administrative law judge further concludes that even if possession here is a rebuttable presumption, the claimant has not sufficiently rebutted the presumption. As noted above the claimant's testimony was not credible. Clearly, as the owner and operator, the claimant had dominion and control over the vehicle and the items contained therein and this is sufficient to establish constructive possession.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant, until, or unless, she requalifies for such.

DECISION:

The representative's decision dated December 22, 2005, reference 01, is affirmed. The claimant, Elenita G. Celindro, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she was discharged for disqualifying misconduct.

kjf/tjc