

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TAMIKA L GARDNER**  
Claimant

**PLASTIC PRODUCTS CO INC**  
Employer

**APPEAL 15A-UI-05979-EC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/03/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the May 14, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on June 25, 2015. The claimant, Tamikka Gardner, participated. The employer, Plastic Products Co Inc., participated through Jane Molony, HR Administrator.

**ISSUE:**

Whether or not the separation from employment was a discharge for misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a materials clerk from February 4, 2002, until this employment ended on May 1, 2015, when her employment was terminated, for violating safety rules on three different occasions within a three-month period. These safety rules are included in the employee handbook which the claimant received when she began working for this employer. She also received training for forklift operation safety.

On January 23, 2015, the claimant drove a forklift off a dock. She was not wearing a safety belt. She jumped off the fork lift, escaping injury. The employer's safety rules require its employees to wear a safety belt when operating a forklift. The forklift training video includes this safety belt requirement and instructs forklift operators not to jump off. She received a warning for this safety rule violation and a two-day suspension.

On April 10, 2015, the claimant went under a dock plate to rescue a kitten. This action violated the employer's safety rules. Her supervisor told her not to take this action. She disregarded his instructions. He watched her to make sure she made it out safely. She received a second warning for this safety rule violation and a two-day suspension. This second warning included language stating that safety rule violations may result in termination.

On April 21, 2015, the claimant backed into a genie boom when she was leaving the parking lot. This unsafe driving violated the employer's safety rules.

The employer sought approval from its corporate human resources staff for her discharge for this series of safety rule violations. This process took several days.

On May 1, 2015, the claimant's employment was terminated due to the multiple warnings for safety rule violations.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. 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.

The employer bears the burden of proof in this matter. Iowa Code § 96.6(2). Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). In order to justify a denial of unemployment benefits, the misconduct must be substantial. In this setting, the focus is on deliberate, intentional, or culpable acts by the employee. *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa App. 1992).

The employer is charged with protecting the safety of its employees. It has presented substantial and credible evidence that claimant was acting against the best interests of the employer and her own safety by her actions on three separate occasions when she violated various safety rules, all within a three-month period.

The claimant violated the employer's safety policy when she drove the forklift off the dock. Then, she violated the employer's safety policy when she went under the dock plate. Then, she violated the employer's safety policy when she backed into a piece of company equipment. She knew that her repeated violations of the safety rules could lead to termination. This was deliberate disqualifying misconduct. Benefits are denied.

**DECISION:**

The May 14, 2015, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Emily Gould Chafa  
Administrative Law Judge

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Decision Dated and Mailed

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