

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MACHELL J HERSHEY
Claimant

APPEAL NO. 06A-UI-10024-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VERMEER MANUFACTURING CO INC
Employer

OC: 09/17/06 R: 02
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Machell Hershey, filed an appeal from a decision dated October 12, 2006, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 30, 2006. The claimant participated on her own behalf and with a witness Greg Rankin. The employer, Vermeer, did not provide a telephone number where a representative could be contacted and did not participate. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Machell Hershey was employed by Vermeer from September 7, 2004 until September 5, 2006. She was a full-time welder. During her employment Ms. Hershey received a copy of the employee handbook. One of the policies prohibits employees from leaving company property during the paid breaks.

On August 31, 2006, the claimant was questioned by Area Manager Travis Strunk and Human Resources Manager Ken Carr about the previous day. It was reported the claimant and another employee, Greg Rankin, had driven off the property to smoke during the morning break. The claimant acknowledged she had been in Mr. Rankin's car, but he only drove her down a few blocks to another building, and he drove on. He picked her up on his way back so they departed and arrived back at their work site together, but were not together during the entire break.

The employer investigated further and notified the claimant on September 5, 2006, she was discharged for leaving the premises during her break.

REASONING AND CONCLUSIONS OF LAW:

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The witness statements from the employer were rebutted by the claimant and the employer did not present any more definite or first-hand testimony regarding the incident. It has failed to establish the claimant was discharged for job-related misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of October 12, 2006, reference 01, is reversed. Machell Hershey is qualified for benefits provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/cs