

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARI L HUBBARD
Claimant

APPEAL NO. 07A-UI-04925-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

**OC: 04/08/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 7, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 31, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Randy Stravers, attorney at law. Richard Carter participated in the hearing on behalf of the employer with witnesses, Angie Geno, Jason Bingham, Julie Wolf, and Tonya Simonson. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as an assembler for the employer from April 17, 2004, to April 2, 2007. She was informed and understood that under the employer's work rules, employees were expected to treat others with respect. Mark Sanger was the claimant's supervisor. The claimant worked in the same area as an employee, Dori.

A new employee, Tonya Simonson, came to work in the same work area as the claimant and Dori. As a new employee, Simonson was not as proficient in performing her job duties as the claimant and Dori and was having difficulty keeping up with the work. Dori and the claimant displayed impatience with Simonson's slowness in completing work, which distressed Simonson. Simonson believed Dori and the claimant were deliberately stacking work around her. Dori repeatedly directed comments toward Simonson about her being behind on her work. The claimant did not stack work around Simonson to upset her. The claimant observed Dori push the lever to release windows to their work area even though there were windows that had not been completed at one of the work stations so that the work would back up.

Other workers informed Sanger about what they believed was Simonson being mistreated by the claimant and Dori. Simonson later approached Sanger about her complaints toward the claimant and Dori. Sanger initially told Simonson that talking to Dori and the claimant would

only make things worse. A week later, Sanger notice that Simonson was very upset at how she was being treated and said he would talk to Dori and the claimant.

On March 27, 2007, Sanger issued a warning to the claimant and Dori regarding their treatment of Simonson and other employees. Sanger warned the claimant about doing other employees' work for them. He told her she could give advice to the employees she worked with but it was up to them to decide whether to take the advice. Sanger told her if an employee got behind, they were to wait until she got caught up. Sanger said that as a general reminder, she was to be nice to her fellow employees. Sanger told the claimant that she was not to talk to anyone else about what had been discussed.

After the claimant went back to her work station, Dori immediately told the claimant what Sanger had said to her and asked the claimant what Sanger said in their meeting. The claimant told Dori she would not discuss what went on in the meeting. Instead the claimant went back to work. Dori became loud and made comments that other employees could hear about having to be nice to everyone and that she would have to go around with a permanent smile on her face and other similar comments. The claimant did not make comments and was uncomfortable with Dori's behavior. The claimant did not disclose what Sanger had said to other employees.

On February 2, 2007, the employer suspended the claimant pending an investigation regarding her treatment of employees and reports that the employer had received that the claimant had disclosed the warning she had received from Sanger and had made loud comments to coworkers about having to be nice. The employer informed the claimant that she was discharged about two weeks later. The employer discharged the claimant for violation of the employer's respectful work environment policy and breaching confidentiality because management believed she had disclosed to employees what Sanger had warned her about.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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).

871 IAC 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 has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No current act of work-connected misconduct has been proven in this case. The findings fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified believably that after getting the warning she went back to work and did not discuss the warning she received or behave inappropriately. Many of the things attributed to the claimant were actually things the claimant had reported that Dori had said, but somehow it was turned around as being something the claimant had said (for example the comment about having to wear a permanent smile. Dori was identified by both parties as being the person most responsible for problems in the workplace. Work-connected misconduct by the claimant has not been proven here.

DECISION:

The unemployment insurance decision dated May 7, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs