

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA A APPLEBY
Claimant

EAST PENN MANUFACTURING CO INC
Employer

APPEAL 18A-UI-07556-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/24/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 11, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 2, 2018. Claimant participated. Employer participated through personnel coordinator Melissa Frederick.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on March 19, 2018. Claimant last worked as a full-time label room employee. Claimant was separated from employment on June 22, 2018, when she was terminated.

Employer has a code of conduct that is given to all employees at the time of hire. It prohibits inappropriate and abusive comments, interfering with job performance of co-workers and managers, and failure to work in a cooperative manner. Claimant was aware of the code of conduct.

As a label room employee, claimant was responsible for creating labels for product manufactured on the production line. The production line would request different labels accordingly. On June 20, 2018, the workers on the production line requested labels for the “Napa” product. Labels had previously been made for the product and were stored near the production line. Instead of making the requested labels, claimant went down to the production line and informed an employee of where the labels were located. Unbeknownst to claimant, there was not an adequate amount of Napa labels on the product line. Later that day, the production line employees requested labels for a different product. The labels had previously been made and were stored on the line. Claimant pointed this out to the production line employees. Finish line foreman Tim Rivera then spoke with claimant and stated that if the production line ordered labels, she needed to make them. Claimant argued with Rivera and stated that it was a waste of her time if the labels had already been made and were stored on the production line, but if he wanted her to go ahead and make the labels again she would do

so. Rivera stated that is what he wanted. Claimant continued to argue with Rivera and both individuals raised their voices. Rivera immediately gave claimant a written warning for the incident.

On April 13, 2018, claimant received a written warning from the plant manager after she interrupted his conversation with the owner of the company's grandson. Claimant approached the grandson with a demanding demeanor and when the plant manager tried to intercede, claimant stated, "This doesn't involve you."

Personnel coordinator Melissa Frederick also had several conversations with claimant about the necessity of getting along and working well with others. During those conversations, claimant raised her voice at Frederick. Frederick had to tell claimant to "tone it down."

After the human resources department reviewed the written warning along with claimant's history, employer decided to terminate her employment on June 22, 2018.

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.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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).

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant spoke inappropriately in response to a supervisor's work directive after being warned that failure to work and behave in a cooperative manner would result in termination. This constitutes job-related misconduct.

DECISION:

The July 11, 2018, (reference 01) unemployment insurance 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.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/scn