

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA L WEYDERT
Claimant

APPEAL NO. 07A-UI-08660-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMPRO INC
Employer

OC: 08/05/07 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rebecca Weydert filed an appeal from a representative's decision dated September 4, 2007, reference 01, which denied benefits based upon her separation from Ampro, Inc. After due notice was issued, a hearing was held by telephone on September 25, 2007. Ms. Weydert participated personally. Participating as witnesses for the claimant were Peggy Huntley and Sandy Cervantes. The employer participated by Wes Reynolds, Rick Ressler, Jerome Clock and Leann Doyle. Exhibits One through Eight were received into evidence.

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from July 25, 2006 until August 8, 2007 when she was discharged from employment. Ms. Weydert worked as a full-time production printer and was paid by the hour. Her immediate supervisor was Rick Ressler.

The claimant was discharged based upon an incident that occurred on August 8, 2007. On that date the claimant experienced some production problems producing printing on cups. The claimant alerted Jerome Clock, a management worker who was paid by the hour and oversaw the maintenance and operability of the production machinery. Mr. Clock had previously checked the machine and believed it to be operable. Mr. Clock responded to the claimant's call for assistance and checked the machine determining that it was performing properly, misprinting only approximately two cups during a run of 20 to 25 cups. Mr. Clock advised the claimant that the machine was running satisfactorily and advised the claimant not to call him again for unnecessary purposes. The claimant and Mr. Clock had previously experienced some personality conflicts and both had been warned by the company to avoid conflict. When Mr. Clock made a reference to a statement that the claimant had made inadvertently while dialing him, a dispute developed and Mr. Clock sought Mr. Ressler to resolve the issue.

Upon reaching the production floor, Mr. Ressler had Mr. Clock run some trial cups and determined that the machine was running satisfactorily for company needs and instructed Ms. Weydert that Mr. Clock had been able to run a series of cups without problems and the claimant should begin to operate her machine. Ms. Weydert responded, "I don't care what Jerome did, I'm not running them" and began to leave the area whereupon a decision was made to terminate Ms. Weydert from her employment. The claimant had been previously warned on a number of occasions regarding bad attitude and failure to work cooperatively with other employees and was aware that further problems could result in termination from employment. A number of employees had brought to the attention of company management their inability to work cooperatively with Ms. Weydert during the course of her employment with the company.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the employer has sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. The evidence establishes that Ms. Weydert had been warned and counseled on a number of occasions regarding her attitude and her failure to work cooperatively with other employees and management workers. In spite of the warnings the employer continued to receive complaints from employees with respect to their inability to work effectively and cooperatively with the claimant. When a personality conflict developed between the claimant and Mr. Clock, the company had acted appropriately in warning both individuals. On August 8, 2007, Mr. Clock responded to a summons from the claimant regarding a machine problem and attempted to resolve any problem. When a verbal dispute developed between the two, Mr. Clock acted appropriately by locating and summoning a supervisor to the area to handle the problem. Mr. Ressler, the Plant Manager, spoke with the claimant to determine the problem and directed Mr. Clock to determine if the machine was operable. Based upon Mr. Ressler's observation, he felt the machine was operable and directed the claimant to resume working. The claimant, who was angry refused, making reference to Mr. Clock. Based upon previous warnings that had been served upon the claimant, the demeanor that she displayed on the day in question, and her refusal, the claimant was discharged from employment at that time.

Although the administrative law judge is cognizant that Ms. Weydert denies being confrontational or refusing a work directive, the administrative law judge finds that the claimant's testimony strains credibility based upon previous warnings that were served upon the claimant and the claimant's demeanor during the administrative hearing of this matter.

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.

For the reasons stated herein, the administrative law judge finds the claimant was discharged for misconduct in connection with her work. Benefits are withheld.

DECISION:

The representative's decision dated September 4, 2007, reference 01, is hereby affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly job insurance benefit amount, providing that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs