IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ELLEN S LADELY
Claimant

JELD-WEN INC
Employer

APPEAL NO. 12A-UI-09728-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/24/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jeld-Wen (employer) appealed a representative's August 1, 2012 decision (reference 02) that concluded Ellen Ladely (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 5, 2012. The claimant participated personally. Vickie McGinnis, down cutter, and Marvin Burkett, mold operator, were witnesses subpoenaed for the claimant. The employer was represented by Robin Moore, hearings representative, and participated by Troy Dillon, production manager, and Jeff Korth, group manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on January 2, 1997, and at the end of her employment she was working as a full-time block mold operator. The claimant signed for receipt of the employer's most recent handbook on February 8, 2012. The employer did not issue the claimant any warnings during her last two years of employment.

On June 14, 2012, the claimant started doing a co-worker's work and said "Never mind putting in the regrind, I'll do it myself". The claimant was frustrated because she had been waiting for 45 minutes to perform work due to lack of material and the co-worker's inattention. The co-worker called the claimant a fucking bitch. The co-worker folded her arms and rammed the claimant with her body, knocking scrap product to the ground. The claimant asked the co-worker to get out of her face. The co-worker said she did not have to.

The claimant asked for the manager to come over and he took the two to the production manager's office. The co-worker cried and said the claimant was mean to her. The co-worker told the employer that she just wanted to be the claimant's friend. When the co-worker made these comments while crying right after the co-worker had rammed into the claimant, the

claimant made the comment that the co-worker might need counseling. The employer suspended the claimant for three days. On June 19, 2012, the employer terminated the claimant but not the co-worker.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence of job-related misconduct on the part of the claimant. Clearly the employer tolerated the co-worker's behavior and she is still employed. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 1, 2012 decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw