

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONNA L JOHNSON
Claimant

APPEAL 16A-UI-13679-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

OC: 11/27/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Donna L. Johnson (claimant) filed an appeal from the December 13, 2016, (reference 01) unemployment insurance decision that denied benefits based upon the determination Van Diest Supply Co. (employer) discharged her for failing to follow instructions in the performance of her job. The parties were properly notified about the hearing. A telephone hearing was held on January 18, 2016. The claimant participated personally. The employer participated through Personnel Manager Carolyn Cross, Regulatory Affairs Manager Jim Piaszynski, Manufacturing Coordinator Clarke Vold, and Vice President of Manufacturing Lee Trask. The employer was represented by Attorney Espnola Cartmill. The employer sent in two documents for the hearing, the safety policy and notes from a meeting with the claimant. These were offered but not received into the record as the claimant had not received the documents prior to the hearing.

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: The claimant was employed full-time as a Production Operator beginning on October 6, 2003, and was separated from employment on November 30, 2016, when she was discharged. The claimant reported directly to David Myers.

The employer has policies related to Lock Out Tag Out (LOTO) and proper use of cover plates or shields. It requires an employee to turn off electricity to a machine if it is being cleaned and to use all cover plates or shields in a proper fashion. The policy puts employees on notice that a single violation could result in termination. The claimant had been certified as a safety trainer for the employer. The claimant most recently attended training on the employer's safety policies on October 28, 2016.

On November 28, 2016, the claimant was responsible for cleaning out a large kneader that had been misused the night before. The kneader consists of two barrels that rotate to create dough. It has a cover plate or shield that was to be locked down by four clamps while the kneader was

in operation. When the cover plate is properly clamped down, it cannot be moved from its position atop the kneader. Myers told the claimant to get the machine cleaned out as quickly as possible so that production could resume. In order to clean the machine, the claimant needed to obtain additional powder from the floor below to add to the kneader. On one of her trips to get powder, the claimant stumbled knocking the cover plate out of position while the kneader was in operation. The cover plate ended up in the kneader between the two rotating barrels.

The incident was reported to Regulatory Affairs Manager Jim Piaszynski and Manufacturing Coordinator Clarke Vold who went to the facility to investigate the incident. The claimant reported she had properly clamped down the cover plate to the kneader. However, Piaszynski and Vold were unable to create the accident as described by the claimant with the cover plate properly clamped down. The employer determined the claimant had not properly followed the LOTO and safety shield policies. She or other employees in the area could have been injured as a result of the safety policies not being followed. The employer ended the claimant's employment.

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. Benefits based upon wages credited from this employer's account are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa regulations define misconduct:

"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.

Iowa Admin. Code r. 871-24.32(1)a. 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 of proof in establishing disqualifying job misconduct. *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). 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). 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).

The employer has a duty and interest in maintaining a safe work environment for its employees. It has put policies and procedures in place to maintain the safety of its workers. The claimant's failure to clamp down the cover plate while the kneader was in operation was a deliberate disregard of the employer's best interests. This is misconduct without prior warning. Accordingly, benefits are denied.

DECISION:

The December 13, 2016, (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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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