

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA A PASCHKA
Claimant

APPEAL NO. 12A-UI-06028-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYER'S SERVICE BUREAU INC
Employer

OC: 04/22/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated May 14, 2012, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on June 18, 2012. The claimant participated. The employer participated by Joe Rausenberger, superintendent, and John Rausenberger, company vice president. Employer's Exhibits 1, 2, 3, 4, and 5 were received into evidence.

ISSUE:

At issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Pamela Paschka was employed by Employer's Service Bureau, Inc. from December 11, 1997, until April 18, 2012, when she was discharged from employment. Ms. Paschka was assigned to work as a production laborer at a Nestle facility. The claimant was paid by the hour. Her immediate supervisors were Joe and John Rausenberger.

Ms. Paschka was discharged from her employment when the employer reasonably concluded that Ms. Paschka had violated the company's strict policy prohibiting workplace violence.

On April 17, 2012, Ms. Paschka was performing her production line duties when another operator from a different line approached the work line where Ms. Paschka was located. The other individual was picking up trash and objects from production lines. Ms. Paschka became agitated at the other employee's intrusion into her work line area. During an exchange with the other worker, Ms. Paschka's hands struck the other worker in the face. The incident was observed by three of approximately eight workers in the area. Ms. Paschka requested that the company interview other workers.

When informed of the issue, the company investigated the matter to determine if Ms. Paschka or the other worker had violated the company's workplace violence policy. Based upon

statements made by individuals who observed the incident, the employer reasonably concluded that Ms. Paschka had struck the other employee in a slapping motion, in violation of the company's violence in the workplace policy. A decision was therefore made to terminate Ms. Paschka from her employment.

It is the claimant's position that she did not intentionally strike the other worker but that she placed her hands up in a motion to signify that the other worker should stop and that the other worker "ran into the claimant's hand."

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

The evidence in the record establishes that the claimant knew or should have known of the company's zero tolerance for workplace violence and was aware that she could be discharged for violating the company policy. The evidence in the record further establishes that Ms. Paschka's hand did come into contact with the other individual's face and that other individuals who observed the incident concluded that Ms. Paschka had intentionally struck the other worker.

Although the administrative law judge is aware that Ms. Paschka maintains that she placed her hand up and that the other employee ran into her outstretched hand, the administrative law judge concludes the claimant's testimony strains credibility.

Although sympathetic to the claimant's situation, the administrative law judge must conclude that reasonable alternatives were available to the claimant and that the claimant's act of striking the other worker during working hours on the premises of the client location was misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are withheld.

DECISION:

The representative's decision dated May 14, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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