

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANN C SLOTHOWER
Claimant

APPEAL NO. 11A-UI-15317-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PECH OPTICAL CORP
Employer

**OC:10/30/11
Claimant: Respondent (1)**

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated November 22, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 29, 2011. Claimant participated. Employer participated by Barbara Michaelsen, Human Resources Generalist. The record consists of the testimony of Barbara Michaelsen; the testimony of Diann Slothower; and Employer's Exhibits 1-4.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a wholesale optical laboratory. The employer manufactures lenses and inserts them into frames in accordance with a physician's prescription. The claimant was hired on December 10, 2007. Her last day of work was November 1, 2011. She was terminated on November 1, 2011.

The incident that led to the claimant's termination occurred on October 31, 2011. The claimant was responsible for running a machine that coated lenses. Certain lenses, however, cannot be coated. The lenses are on a tray and if the tray is stamped CRZ, this means that the lenses cannot be coated and are washed instead. The claimant is responsible for noting when a tray is marked CRZ and pushing a button for washing instead of coating the lenses. On October 31, 2011, the claimant returned from lunch. She thought she pushed the button for washing but she did not. As a result the lenses were coated instead of washed.

The claimant had made this mistake on three prior occasions: October 21, 2011; September 30, 2011; and August 24, 2011. On October 21, 2011, she was suspended for one day and if her performance did not improve, she would be terminated. (Exhibit 2)

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate

acts or omissions that constitute a material breach of the worker's duty to the employer. Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

In this case there is insufficient evidence of misconduct. The claimant did not perform her job to her employer's satisfaction and the claimant was terminated after she received a verbal warning and two written warnings. The claimant was terminated after the fourth mistake. The claimant testified that she thought she had pushed a button for wash so that the lenses would not be coated but she did not push the button. This is an act of negligence, not an act of wanton carelessness. The employer may have had good business reasons for terminating the claimant but those good business reasons are insufficient to show disqualifying misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated November 22, 2011, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css