

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONICA M SWEET
Claimant

APPEAL NO. 09A-UI-17333-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALPLA INC
Employer

**OC: 10/18/09
Claimant: Respondent (1)**

Section 96.5-2-A -- Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated November 3, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 23, 2009. Claimant participated. The claimant was represented by Michael Kennedy, Attorney at Law. Employer participated by Bill Lehner, Human Resources Manager. The record consists of the testimony of Bill Lehner and the testimony of Monica Sweet.

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 manufactures plastic packaging, primarily bottles and caps. The claimant was hired on March 10, 2008, as a full-time packaging operator. Her last day of work was October 13, 2009. The effective date of her termination was October 16, 2009.

The incident that led to the claimant termination occurred on March 10, 2009. At the end of the shift, the claimant and other members of her team went to the break room to celebrate their team leader's fifth anniversary. There was a cake. As a joke, several employees pushed the team leader's face into the cake, which led to a number of employees throwing cake around the break room. The claimant participated in the food fight.

The break room was messy after the food fight and another employee, who was working the third shift, offered to clean it up. The claimant left. This other employee, Ashley Provence, was prohibited from cleaning the room up by her third shift supervisor. As a result, the room was not cleaned. An investigation ensued and when the claimant came to work on October 13, 2009, she was placed on suspension. The decision was then made to terminate her. The employer took into account two previous warnings for chewing gum on the work floor. No food products

are permitted in the work area because of the possible contamination to the packaging, which is used for such items as mouthwash.

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.

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. The legal definition of misconduct excludes good faith errors in judgment or discretion. The employer has the burden of proof to show misconduct.

After carefully reviewing the evidence, the administrative law judge concludes that there is insufficient evidence of misconduct. The cake fight in the break room was not the best way to celebrate a team leader's anniversary. The participants showed poor judgment, especially since the employer had strict rules about food on the work floor. However, this appears to have been an isolated instance as opposed to a pattern of conduct on the part of the claimant. The claimant's conduct may have been grounds for termination, but misconduct has not been shown. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated November 3, 2009, 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