

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOYLENE V JONES
Claimant

APPEAL NO. 14A-UI-11121-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTERBRAND CABINETS INC
Employer

OC: 09/28/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 16, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 14, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Kyle Rode participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a wood worker from May 12, 2014, to September 30, 2014. She was informed and understood that under the employer's work rules, she could be discharged for receiving three written warnings in a 12-month period. The claimant was informed and understood that under the employer's work rules, unsafe acts and horseplay were prohibited. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

The claimant received a written warning on July 29 for absences and tardiness. She received a second written warning on August 21 for attendance after she was 29 minutes late without notice to the employer and had other attendance occurrences since the July 29 warning.

Employees use small rubber balls about the size of a BB (called space balls) in doors to keep them from cracking. In the past, the claimant had witnessed employees, including senior employees who had worked for the employer for years, take the space balls and throw them at each other. This was a common occurrence in the workplace during the time the claimant worked there. She had never heard of anyone who was disciplined or warned for this. On September 30, the claimant watched a coworker put a couple of space balls in air nozzle and

shoot them at the ceiling. The claimant put two space balls in the air hose and shot them at the ceiling. The coworker continued to shoot space balls out of the air hose. Another employee in the area reported to management what the claimant and the coworker had done.

The employer discharged the claimant on October 1, 2014, because her conduct on September 30 warranted a third written warning under the employer's policy, which triggered her discharge. If the claimant had not had the two prior warnings, she would not have been discharged.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The unemployment insurance rules provide: "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." 871 IAC 24.32(8).

The current act of alleged misconduct must be the claimant's conduct on September 30 in shooting two space balls at the ceiling. In light of the fact that the claimant had witnessed employees, including senior employees, throwing space balls at each other, it was a common occurrence, and the claimant was unaware of anyone who was disciplined or warned for this, I conclude this was an isolated instance of poor judgment not willful and substantial misconduct.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated October 16, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs