

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CYNTHIA M PETERSON**  
Claimant

**APPEAL NO. 10A-UI-05732-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VALERO SERVICES INC**  
Employer

**Original Claim: 02-21-10  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 12, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 20, 2010. The claimant did participate. The employer did participate through (representative) Bob Abbott, Senior Manager of Human Resources; Monica Gonzales, Lead Human Resources Specialist; and Nicolas Winters, Shipping and Receiving Supervisor. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a shipping and receiving operator, full-time, beginning February 20, 2007, through February 19, 2010, when she was discharged. The claimant and her coworker were each to climb up on top of the rail car after the ethanol had been loaded and one was to tighten the bolts and set the seals and the other was to check and make sure that it was done correctly. Then, each would initial a company form indicating that the work had been done as instructed. The policy was set by the company and the railroad to comply with the safety regulations of the Federal Railroad Administration. On February 11, Mr. Winters watched the claimant and her coworker perform the job duties. He noticed that the claimant was not climbing up on top of the railroad cars. Mr. Winters reviewed the paperwork that the claimant and her coworker had initialed, which indicated she had climbed up on top of the car to check the seals and to make sure that the car was properly buttoned up. Mr. Winters first questioned the claimant's coworker, who admitted that the claimant had not climbed up on top of the car and that they had falsified the company documents indicating that the work had been completed properly. When Mr. Winters initially approached the claimant, she denied that she falsified the company records and that she had failed to climb up on top of the rail car to check the seals. When Mr. Winters told the claimant that her coworker had admitted that she had not been on top of the car and that they had falsified the logs, the claimant admitted that she lied to Mr. Winters and that she had not climbed up on the rail road cars to insure that they were

properly buttoned up. The claimant had been previously disciplined in July 2009 for a safety violation and at that time was warned that any further infractions of the rules could lead to her discharge.

**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.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The claimant knew she was to climb up on top of the car and did not do so. She knew she was to accurately fill out the checklist log indicating what she had done and did not do so. The claimant lied to Mr. Winters about her actions. The claimant owed her employer honesty. Her failure to follow the safety rules could have resulted in a fine to the employer or, worse, an accident that could have injured people. The claimant had been warned previously that she should follow the safety rules and did not do so. Her actions are sufficient misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The March 12, 2010 (reference 01) 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.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/kjw