

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERICKA L MONTGOMERY
Claimant

APPEAL NO: 15A-UI-11059-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTERBRAND CABINETS INC
Employer

OC: 12/28/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 21, 2015 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 19, 2015. The claimant participated in the hearing. Amy Mosley, Human Resources Representative, and Jeff Schmitz, Supervisor, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on September 21, 2015. The claimant received the decision October 1, 2015. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 1, 2015. The appeal was not filed until October 5, 2015; which is after the date noticed on the disqualification decision. Because the claimant did not receive the decision until after the due date, the administrative law judge concludes the claimant's appeal is timely.

The claimant was employed as a full-time woodworker for Masterbrand Cabinets from April 22, 2002 to August 28, 2015. She was discharged for receiving her third written warning in a calendar year. The employer's policy, as stated in the handbook and during orientation, states that if an employee receives three written warnings of any kind during a rolling calendar year it will result in termination of employment.

On January 8, 2015, the claimant received a written warning for attendance. On April 8, 2015, the claimant received a written coaching for failure to pull staples from the plywood as required. On July 8, 2015, she received a second written warning for attendance. On July 15, 2015, the claimant received a written coaching for substandard work regarding her gloss checks and her

failure to perform them in a timely manner. The employer's expectations are that the employee will conduct gloss checks every day and accurately report the information. The claimant was not doing the gloss check entries every day and was often writing down the wrong numbers.

On August 27, 2015, Team Lead Tad Reynolds questioned the claimant regarding her gloss checks entries that she was required to do as one of the essential functions of her job. The claimant responded, "I'm going to tell you the truth. I just made those up and wrote them down." She told the employer she stopped doing gloss checks beginning during the summer of 2015 and falsified the numbers when she could not find the gloss check machine. It was her responsibility to find the machine if she did not have one. Consequently, the employer issued the claimant her third written warning of the calendar year and her employment was terminated effective August 28, 2015.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant knew she was required to perform the gloss checks every day and record the numbers. This process takes very little time and effort and impacts the product and subsequently the employer if not done and done correctly. The wood sheen is required to be between 15 and 25 but the wood the claimant worked on was coming out higher and lower. The employer is required to stop the line when a problem with the sheen is discovered and conduct an investigation to ascertain the source of the issue.

The claimant received two previous written warnings for attendance and a written coaching for failing to perform the gloss checks and accurately record them in July 2015. The written warnings clearly state that receiving three written warnings of any kind during a rolling calendar year will result in termination.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The September 21, 2015 (reference 01) decision is affirmed. The claimant's appeal is timely. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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