

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEAN M DILLEY
Claimant

APPEAL NO. 13A-UI-12299-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

OC: 10/06/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated October 24, 2013, reference 01, that denied unemployment insurance benefits. After due notice, a telephone hearing was scheduled for and held on November 25, 2013. The claimant, the appellant herein, did not respond to the notice of hearing. The employer participated by Ms. Carolyn Cross, Personnel Manager and Mr. Lee Trask, Vice-President of Manufacturing. Based upon the appellant's failure to participate in the hearing, the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

At issue in this matter is whether the decision previously entered should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which she could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The administrative law judge takes official notice of the hearing control screen for the Clear2There system on November 25, 2013.

Jean Dilley was employed by Van Diest Supply Company from September 8, 2010 until October 3, 2013 when she was discharged for multiple violations of company policies. Ms. Dilley was employed as a full-time production operator and was paid by the hour.

The claimant was discharged after a review of company security cameras showed Ms. Dilley violating numerous company policies. Claimant was observed playing crossword puzzles at her work station and having a cell phone in the work place in violation of company policy. Claimant was also observed on numerous occasions eating food in work areas and failing to wear a hard

hat as required. When questioned about the matter, Ms. Dilley denied the violations of company rules. The claimant was then shown the video surveillance tapes showing the violations. Ms. Dilley was discharged for repeated violations of known company rules and for being untruthful in the investigation of the matter.

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 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The administrative law judge has carefully reviewed the evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

The evidence in the record establishes that the claimant repeatedly, willfully violated established company policies and was untruthful in statements made to the employer during the investigation of the matter. The claimant's conduct constitutes misconduct in connection with the work. Unemployment insurance benefits are withheld.

Pursuant to the rule, the appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the beginning of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time.

DECISION:

The unemployment insurance decision dated October 24, 2013, reference 01, is affirmed. The decision finding the claimant was discharged for misconduct in connection with her work remains in effect. Benefits are denied until the claimant has been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The decision will become final unless an appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs