

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHYLLIS MCCOY

Claimant

APPEAL NO: 08A-UI-04656-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORCROSS SAFETY PRODUCTS LLC

Employer

**OC: 04/13/08 R: 04
Claimant: Respondent (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Norcross Safety Products, LLC (employer) appealed an unemployment insurance decision dated May 5, 2008, reference 01, which held that Phyllis McCoy (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 30, 2008. The claimant participated in the hearing. The employer participated through Leana Marxen, Human Resources Generalist; Larry Hall, Warehouse Supervisor; Kevin Roesner, Director of Distribution; and Beth Crocker, Employer Representative. Employer's Exhibits One through Four were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time general warehouse worker from May 19, 2003 through April 9, 2008. She was discharged after making a threat to a co-employee on April 9, 2008. The claimant had been placed on a final warning on July 17, 2007 for "failure to do work in an approved manner" and for "needling fellow workers." The final warning was in effect for 12 months. The claimant and another employee had some issues and the claimant gave the other employee some unnecessary advice. That was the extent of the reprimand and there is no evidence of any other warnings issued to the claimant.

There is no evidence of any further problems until April 9, 2008 when the claimant argued with Twalla Sanders, a temporary worker who was repeatedly disrespectful to her co-employees. For three weeks, the claimant had complained about Ms. Sanders to the warehouse supervisor and the director of distribution but no action was taken. The claimant reported that Ms. Sanders told Trudy Mollten, another temporary employee, that she was "acting like a Norcross bitch" but Ms. Mollten denies that. The claimant reported that Ms. Sanders told her that she may be here now but when Ms. Sanders sees her outside, Ms. Sanders will get her. Ms. Sanders' mother,

Annie Reed, was called to the scene and she told her daughter to go home, even though she had no supervisory capacity over Ms. Sanders. After Ms. Sanders left, the claimant said either, "If she did anything to my truck, I'll....." or "if she messes with my truck – I'm gonna....." The comment was said in front of Ms. Reed, the warehouse supervisor and the director of distribution. Ms. Reed asked her what she was going to do but both supervisors directed the women not to make any more comments. An investigation was conducted by human resources and the claimant was discharged for making a "threat" when she was on a final warning.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (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 claimant was discharged for making an alleged threat after she was placed on a final warning nine months prior to the incident. The claimant had worked for the employer for five years and there is only evidence of one warning, even though the warehouse supervisor indicated the claimant could not get along with her co-employees. However, the warning was still in effect when the claimant allegedly made the threat. The threat consisted of the claimant saying that if the employee, who was no longer there, had done anything to her truck, she would.....” The statement was not made to the person in question and the claimant did not finish the sentence. A typical dictionary defines a threat as an expression of an intention to inflict pain, injury, evil or punishment.” Granted the claimant demonstrated she would take some type of action but she did not threaten she would do anything in particular. She could have been thinking she would report it to the police or that she would pursue Ms. Sanders within the full bounds of the law. She could have been thinking she would vandalize Ms. Sander’s car or something similar to that. The fact is it cannot be known what the claimant was thinking or what she intended as she did not complete her sentence and disqualification cannot be imposed based on an assumed threat. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated May 5, 2008, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs