

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**EVA R MUNGUIA**

Claimant

**APPEAL 15A-UI-07117-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CAPTIVE PLASTICS INC**

Employer

**OC: 05/31/15**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 15, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 23, 2015. Claimant participated. Employer participated through Human Resources Manager Mallory Rosenberger. Saul Munguia and Jose Castillo were registered as claimant's witnesses and were present for the start of the hearing, but they left the hearing shortly after testimony began and they did not testify. Two Spanish interpreters were used through CTS Language Link. Employer Exhibit One was admitted into evidence with no objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a resin helper from June 11, 2003, and was separated from employment on June 2, 2015, when she was discharged.

The employer makes multiple products, some are for food products and others are for non-food products. Claimant was responsible for making sure the right resin (food grade resin or non-food grade resin) and the proper amount of resin is used. If the wrong resin is used, it could create problems, including financial (cost of scrapping the product (waste) and making a new product) and issues with the Food and Drug Administration (FDA) compliance. The employer has instituted a procedure where employee's hookup the resin hose and then double check that the right amount and correct resin is being used. Then an employee signs a sheet to confirm that the double check occurred. There are three employees that work together, the resin helper and two operators. They work as a team to ensure the correct resin is being used for the order. Ms. Rosenberger said all employees are disciplined if they are not doing the double check or if they do the double check incorrectly. The employer has a progressive disciplinary plan action in their employee handbook and this is gone over each time there is a

meeting with an employee regarding a violation. Employees can only reach so many warnings in a twelve month time frame before termination results.

In the last twelve months, the employer has spoken with claimant on multiple occasions about making sure the proper amount and the right resin is being used. The employer issued claimant two written warnings in 2014 for poor job performance, one on September 2 and the other on December 2. The employer also issued claimant, in writing, a Last Chance Final Warning and Suspension (2 days) on January 7, 2015. At this time, Ms. Rosenberger informed claimant that one more occurrence would result in termination. Ms. Rosenberger also informed claimant that if she needed help, she should just ask and the employer will help her.

The final incident occurred on May 24, 2015. Claimant used the incorrect resin blends on two orders. Claimant was subsequently terminated after this incident. Claimant testified that other employees had made similar errors but were not disciplined by the employer.

### **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. Benefits are denied.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit submitted by the employer. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Workers in the human food production and processing industry reasonably have a higher standard of care required in the performance of their job duties to ensure public safety and health. The employer makes products that are for food consumption and non-food consumption. It is imperative that only food resin is used when producing food consumable products. If non-food resin is used in these products, it can create waste products and also issues with the FDA. Claimant was warned on multiple occasions she was not accurately monitoring the resin being used. On January 7, 2015, claimant was given a final warning that she could be terminated if another occurrence occurred. Employer Exhibit One. Less than six months later, claimant had a similar incident. Employer Exhibit One.

Claimant's argument that the other employees were not discharged for similar occurrences is not persuasive. Ms. Rosenberg testified that all employees are disciplined if they commit these violations and claimant was discharged based off the number of her prior warnings that occurred within the last twelve months. Claimant herself testified she was not aware of any past disciplinary issues with the other employees.

Claimant's repeated failure to accurately perform her job duties after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a. On May 24, 2015, claimant again failed to properly monitor the resin being used. Employer Exhibit

One. The employer has presented substantial and credible evidence that claimant poor job performance persisted after having been warned multiple times within the past twelve years. This is disqualifying misconduct. Benefits are denied.

**DECISION:**

The June 15, 2015, (reference 01) unemployment insurance 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.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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