

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

BRENDA L RINGWALD

Claimant,

and

FOX RIVER MILLS INC

Employer.

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HEARING NUMBER: 13B-UI-15231

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A, 26.8-5

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Employment Appeal Board would modify the administrative law judge's Findings of Fact as follows:

The Claimant, Brenda L. Ringwald, worked for Fox River Mills, Inc. from March 29, 2011 through November 30, 2012 as a full-time seamer. A seamer generally does 240-725 seams per load. Ms. Ringwald usually checked her socks for bad seams. Bad seams occasionally occurred when the 'window' of a machine was either too small or too large for the thread to properly attach. Sometimes bad seams occurred as a result of seamer error. The Claimant received prior write-ups for having bad seams; but it was never determined why the seam was bad. She always worked to the best of her ability. Her final warning occurred on November 30, 2012 at which time Casey Walters of the Human Resources Department terminated her. The Employer did not participate in the hearing.

The Employment Appeal Board would modify the administrative law judge's Reasoning and Conclusions of Law as follows:

871 IAC 24.32(4) provides:

Report required. The Claimant's statement and Employer's statement must give detailed facts as to the specific reason for the Claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the Employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In the cases where a suspension or disciplinary layoff exists, the Claimant is considered as discharged, and the issue of misconduct shall be resolved.

The Claimant provided unrefuted testimony that she always worked to the best of her ability. The Employer failed to participate in the hearing to refute any of the Claimant's testimony via testimony or documentation. And while she admittedly received prior write-ups for occasionally having bad seams in her loads, there is nothing in the record to establish whether it was due to machine or human error on her part. The court in Richers v. Iowa Department of Job Service, 479 N.W.2d 308 (Iowa 1991) held that inability or incapacity to perform well is not volitional and thus, cannot be deemed misconduct. Since the record is void of any evidence to establish that the bad seams detected on Ms. Ringwald's work were the result of "repeated acts of careless or negligence," the Board would conclude that the Employer failed to establish disqualifying misconduct. Benefits are allowed provided the Claimant is otherwise eligible.

Lastly, a portion of the Employer's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

John A. Peno

Cloyd (Robby) Robinson

AMG/fnv