

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**CINDY E MCALLISTER
2685 – 170TH ST
MT UNION IA 52644**

**PRECISION RESISTIVE PRODUCTS INC
PO BOX 189
MEDIAPOLIS IA 52637**

**Appeal Number: 04A-UI-08042-BT
OC: 06/27/04 R: 04
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cindy McAllister (claimant) appealed an unemployment insurance decision dated July 19, 2004, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Precision Resistive Products, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 17, 2004. The claimant participated in the hearing. The employer participated through Bob Klein, Personnel Manager.

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 manufacturing operator from May 1, 2000 through July 1, 2004. She was discharged for repeated insubordination after being warned. A written warning was issued to the claimant on November 13, 2003. The claimant was not following her supervisor's instructions and acted offended if anything was said to her. The supervisor told the claimant she needed to be at her workstation when the bell rang. Instead of simply accepting the directive, the claimant replied with unnecessary comments. She had been warned on an unknown date about sleeping on the job. On February 19, 2004, she received a verbal warning for her negative attitude and disruptive behavior. There were several employees in the locker room when a supervisor directed them all to return to work. The claimant came out and falsely claimed that the supervisor only directed her to return to work. On that same date, she was also advised she could not draw pictures when she was supposed to be watching the parts go down the line. The claimant commented that she "can't sleep and can't draw pictures" and asked, "What can I do?" The supervisor again talked to the claimant about her actions and attitude.

The final incident occurred on June 29, 2004 when the supervisor observed the claimant talking and wasting time. The supervisor told the claimant to get busy and the claimant again replied with unnecessary comments. She later went to another worker and told her to not waste a "God damn minute." Her comments upset her co-worker, who reported it to the employer, stating she considered quitting because of the claimant. The plant manager, her supervisor, and the personnel manager met with the claimant and it was their decision to suspend her for several days. The claimant became argumentative and accused the three of lying. The plant manager told the claimant not to call him a liar and walked out of the meeting. The personnel manager told the claimant it was serious to call them liars and that she needed to apologize. The claimant refused to do this even after she was told her job was in jeopardy. She left the meeting and told her co-workers she had been fired even though she knew that not to be the case. She returned on July 1, 2004 to pick up a paycheck, and the personnel manager again asked the claimant if she intended on apologizing, advising her if she refused, she could lose her job. The claimant did not feel she owed an apology so she refused and was discharged at that time.

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 Section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 repeated insubordination after being warned. She had developed a pattern of talking back to the employer any time she was counseled. She was clearly advised if she failed to apologize for calling the plant manager a liar, she would lose her job but she opted for the discharge instead of apologizing. The claimant's insubordination was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 19, 2004, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

sdb/smc