

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUMMER L BREWER
Claimant

APPEAL NO. 13A-UI-02379-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RAINING ROSE INC
Employer

OC: 01/20/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 19, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on March 26, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Ronda Welper participated in the hearing on behalf of the employer. Exhibits One through Four were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a machine operator from November 15, 2010, to January 18, 2013. The claimant received a verbal warning on March 13, 2012, about violating a rule prohibiting wearing jewelry in the production/packaging area. She received a written warning on April 12, 2012, about not having gloves on. She received a final written warning on December 19, 2012, when she was reminded to put her protective eyewear on.

The claimant was informed and understood that under the employer's good manufacturing practices, the use of cell phones was not permitted in the production, packaging, or warehouse areas. Machine operators and supervisors, however, were allowed to carry a cell phone. The claimant had been instructed by her supervisor that she and other operators could use their cell phone to communicate with a maintenance person regarding a mechanical problem or to contact a supervisor about a problem with production or to send in production numbers.

On January 10, 2013, the claimant discovered that a batch of product was too hot. Her supervisor, Greg Longfellow, was not available so she texted him to report the problem and find out what Longfellow wanted to do. He did not respond to the text. Later on when the claimant was able to speak to Longfellow, he said he did not get the text because he did not have his

phone with him. The claimant asked to have surveillance video reviewed to find out what happened with the batch. When the video was reviewed, she was seen texting with her cell phone and the employer believed it was not for proper business purposes.

The employer discharged the claimant for violating the cell phone use policy on January 18, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified creditably that she had texted her supervisor, Greg Longfellow, about a production problem as he had instructed her to do. Rhonda Welper, the director of human resources, testified that Longfellow told her that he had not received any texts from the claimant, but this is hearsay and Longfellow was not at the hearing to testify under oath and subject to questioning as the claimant was. The claimant's evidence outweighs the employer's on this point. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated February 19, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs