

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAT KNERR
Claimant

APPEAL NO. 09A-UI-11165-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ENGINEERED PLASTIC COMPONENTS
Employer

**Original Claim: 12-21-08
Claimant: Appellant (2)**

Section 96.5-2-a –Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 28, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 31, 2009. The claimant participated in the hearing. Dan Kargarzadeh, Human Resources, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time quality auditor from July 2, 2007 to June 23, 2009. The employer's policies and procedures provide that an employee is terminated upon receipt of three written warnings within a rolling 12-month calendar. The employer discharged the claimant after she received her third written warning within three months. The claimant received the first written warning March 25, 2009, for a quality issue. There was a part on a crisper frame running with a broken insert and it ran like that from March 19, 2009 through March 23, 2009, without any auditor catching it. All auditors received warnings for the incident. The claimant punched in late three times in January 2009, twice in February 2009, and once in March 2009. Her tardiness on these six occasions resulted in three attendance points and a written warning was issued to her May 9, 2009. The third warning was issued to the claimant June 18, 2009, for another quality issue June 18, 2009. There was excessive flash found on a tab since the plastic had not been trimmed all day and it continued for 32 boxes. The claimant's job required that she go over the work with the operator, but that was not done.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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 June 23, 2009, after her third written warning. One warning was issued for attendance while the other two were issued for mistakes. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. The employer has failed to establish any intentional wrongdoing. Consequently, there is no disqualifying misconduct and benefits are allowed.

DECISION:

The July 28, 2009, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw