IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ROBIN M LYNN
Claimant

PELLA CORPORATION
Employer

APPEAL NO. 07A-UI-07044-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/17/09 R: 01
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 12, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 6, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Kevin Salmon participated in the hearing on behalf of the employer with witnesses, Bob Rasmussen, Diana Carpenter, Dustin Frank, and Joyce Smay. Exhibits A, B, C, E, F and One were admitted into the 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 production worker from November 29, 1999, to June 11, 2007. The claimant sustained a workplace injury to her back on December 21, 2000, which required surgery and resulted in permanent restrictions including lifting restrictions, repetitive bending and stooping restrictions, repetitive pushing and pulling restrictions, and repetitive climbing and kneeling restrictions.

Prior to the week of May 21, 2007, the claimant had worked in the double hung window area and had no problem performing the work. The week before May 21, her supervisor, Dustin Frank, told her she was going to be working in the casement window area cross-training on a job that involved installing muntins. She had never done the job before and was concerned about the physical demands of the job. She advised Frank about her restrictions and requested that he get a copy of and review her restrictions.

The claimant began working in the casement window area on the muntining job on May 21. She tried her best to learn and perform the muntining job, but she found the job difficult and physically demanding. Originally, she did not have to clean the windows as part of the job, but the trainer later told her that she was to clean the windows as well. The job involved repetitive pushing and reaching. After her second shift in the casement area, the claimant asked Frank

whether he had reviewed her restrictions and whether she could return to her former job. He said he had not seen her restrictions and she was required to stay in the casement area.

On May 23, the casement manager, Bob Rasmussen, came to the claimant's area and began timing her with a stopwatch to test her productivity. Rasmussen told her that she was not making time standards. This caused the claimant additional stress because she did not know the cross-training involved timed production and she did not believe she had been given enough time to get proficient on the job. She raised these objections to Rasmussen. Rasmussen told her that he would talk with Frank. Later that day, the claimant again talked to Frank about returning to her old job in the double-hung area. Frank told her that she would have to stay in the casement area until she met the time standard for the muntining job, and when she came back to the double-hung area, she would be assigned a different job. The claimant then talked to the human resources representative, Diane Carpenter, about what had happened. When Carpenter asked the claimant what she wanted Carpenter to do, the claimant told her that she wanted to go back to the double-hung area. Carpenter replied that she needed to go back to work her assigned job.

May 24 was a scheduled day off for the claimant because she was helping her daughter move back home after college let out. She returned to work on May 25 and worked eight hours doing the muntining job and two hours in the double-hung area. She observed Rasmussen timing her again and speaking with the person who was training her. Over the weekend, the claimant experienced pain in her back, shoulders, and arms that she attributed to the physical demands of the work she was performing aggravating her back condition. She had experienced some pain of a lesser degree before, but thought it would pass.

When she reported to work on her next work day, May 29, she reported her medical problems to Frank and filed an incident report with the company nurse, Joyce Smay. The claimant was allowed to go back to her old job in the double-hung area on May 29 and 30.

After the claimant had talked to Frank and Smay, they consulted with Rasmussen and Robert Larson, the human resources director. They came to the conclusion that the claimant was intentionally slowing down her work because she did not want to muntin, which was untrue. A group of management personnel decided to meet with the claimant on May 30.

On May 30, Frank told the claimant that he needed to meet with her. When she went into the training room, she was taken aback because Frank, Smay, Rasmussen, Larson, and another manager, Jason Holt, were waiting in the room. Larson asserted that the claimant was intentionally slowing down the line to get out of doing muntins, she was wasting time cleaning windows, she was spinning the windows unnecessarily, she was sighting down the muntin like someone looking down the barrel of a gun, and she had hurt herself moving her daughter from college.

These allegations angered and hurt the claimant because each of the allegations was untrue or off base. She never intentionally slowed down her work because she did not want to do muntins. She followed the instructions given to her to clean the windows and was never told to stop. She was instructed by her trainer on how to make sure the muntins were straight. She did not do anything strenuous and did not hurt herself while moving her daughter. She explained these things to those who attended the meeting. In the end, Larson told the claimant that she would work where they told her to work and not tell them where she was working. She was informed that the employer had not decided what action to take based on her conduct. Later that day, the claimant left a message for Smay asking for a doctor's appointment.

On May 31, Smay told the claimant that she could not have a doctor's appointment until she talked to Larson. When she talked to Larson on June 1, he told her the injury was not work-related and she would have to get an appointment with her own doctor. He told her that the employer had still not decided what disciplinary action it was going to take. The claimant became angry that the employer was denying responsibility for her medical problems. She demanded copies of the workers' compensation disciplinary report and the statements he had used to question her in the May 30 meeting and a letter stating that she was required to see her own doctor. Larson denied these requests. The claimant then called Larson a "kakistocrat," a term which means unqualified bureaucrat, said he had a terrible reputation in the community, and commented that she loved his aunt but hated him.

The claimant had an appointment with her doctor on June 4, 2007, at 1:15 p.m. Her first time off request for the appointment was denied because she had written on the time off request it was a doctor's appointment for a work-related injury. She completed a second time off request asking for leave under the Family and Medical Leave Act (FMLA) for injuries to her back, neck, shoulder, and arm incurred from May 21 to 25. The employer approved a time-off request in which she simply said she had a doctor's appointment at 1:15 p.m. When the claimant was examined by her doctor, she told him what had happened and the work she was being required to do. Her doctor completed a doctor's statement on June 4, 2007, in which he stated that the claimant should not be working in the casement area. The claimant gave the statement to Frank when she reported to work on June 5. The claimant continued to work the remainder of the week.

On the afternoon of June 11, Frank and Holt approached the claimant and told her that they needed to meet with her in Carpenter's office. The claimant asked for the plant manager to be involved. When the claimant asserted that she was not going to be fired, Frank assured her that she was not going to be fired. When they went into Carpenter's office, Carpenter informed her that she was being suspended and the employer would inform her whether she was going to be fired or allowed to return to work. The claimant angrily accused Frank of lying to her, accused Carpenter of being all high and mighty but not having a clue about what was going on, and slammed the doors in leaving the building.

On June 11, 2007, the employer discharged the claimant for (1) intentional work slowdown, (2) disrespectful behavior toward supervisors, (3) failure to report an injury in a timely manner, (4) conduct perceived as retaliation toward a co-worker, and (5) intentionally failure to follow her trainer's instructions.

The conduct perceived as retaliation toward a co-worker dealt with the claimant attempting to talk to her trainer and telling another worker that she was looking for the trainer because she had gotten into trouble for slowing down the line. The claimant did nothing to retaliate against the trainer but did talk to her about the allegations that she had been intentionally slowing down the line.

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.

Iowa Code section 96.5-2-a provides:

> An individual shall be disqualified for benefits:
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> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
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> 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.
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> 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 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 preponderance of the credible evidence establishes that the claimant never intentionally performed her job slowly to get out of doing the job or to slow down production. She did the tasks assigned to her to the best of her ability. The supervisors apparently believed that the claimant was washing the windows and sighting down the muntin as time-wasting behavior, but I believe the claimant's testimony that she was told by the trainer to do this. I cannot fault the claimant who undisputedly suffered a past back injury at work requiring extensive surgery with permanent restrictions from wanting to avoid re-injury. I would not consider rotating a window to perform a task that otherwise would require repetitive reaching to be an "intentional violation of a trainer's instructions." The claimant's desire to talk to her trainer after she had been accused of indolent job performance was not retaliatory.

The claimant's repeated efforts to get managers to review her job restrictions were done in good faith. Her supervisor's reaction discounted the claimant's legitimate concerns. The claimant acted reasonably in reporting her medical problems on the next work day after the weekend in which she experienced significant pain following a week of work in the casement department. She had referred to her medical restrictions when she asked Frank, Rasmussen, and Carpenter to be moved back to her old job.

I believe that the claimant experienced pain in her back, shoulder, neck, and arm after performing the job in the casement department. The medical statement from the claimant's doctor supports the claimant's testimony that the job duties in the casement area were causing medical problems for the claimant. I have also found that claimant did not intentionally slow down the line, reported her medical problems within a reasonable period of time, and did not retaliate against her trainer or fail to follow her trainer's instructions. Larson, without any medical evaluation, determined the claimant did not injure herself at work and refused to set up an appointment with the company doctor. All of this must be considered when evaluating the claimant's alleged disrespectful conduct, which was the reaction to accusations that she was malingering, was lying about being hurt at work, and was deliberately disobeying her trainer's directives. While the claimant could have expressed her frustration in a more tactful manner, I conclude it was provoked by the treatment she received from managers. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated July 12, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs