

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAURA M DYSON**  
Claimant

**APPEAL NO: 18A-UI-03498-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLMAN DYNAMICS CORP**  
Employer

**OC: 03/26/17  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a decision of a representative dated March 7, 2018, (reference 01) which denied unemployment insurance benefits, finding that the claimant was discharged from work on February 9, 2018, for violation of a known company rule. After due notice was provided, a telephone hearing was scheduled for and held on Wednesday, April 11, 2018. Claimant participated. Participating on behalf of the claimant was Mr. Leonard Bates, Attorney at Law. Although duly notified there was no participation by the employer.

**ISSUE:**

Whether the evidence in the record establishes work connected misconduct sufficient to warrant the denial in unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds: Laura M. Dyson was employed by Wellman Dynamics Corporation from August 3, 2010 until February 9, 2018, when she was discharged from employment. Ms. Dyson was employed full-time second shift rotary file worker and was paid by the hour. Her last immediate supervisor was Terry McKinny.

Ms. Dyson was notified by letter dated February 9, 2018, that she was being terminated because she had violated the plant rules by having four active written warnings within a 12 month period. The document listed warnings that were given to the claimant on October 27, 2017, October 31, 2017, January 23, 2018 and February 1, 2018. Ms. Dyson had previously been notified by the company that a notice of a corrective action that had been given to the claimant within the 12 month period was “void per grievance settlement.” The claimant reasonably concluded that the disciplinary action would not later be used to discharge her.

The final incident that caused Ms. Dyson’s job separation took place on January 30, 2018. On that date, the department supervisor had reminded employees of the Rotary file department they were to be at their work stations at the beginning and at the conclusion of break and lunch times. Shortly before her scheduled lunch time that day, Ms. Dyson had the onset of a low

sugar medical issue and left her workstation briefly to purchase juice in a vending area. Claimant consumed the juice to balance her sugar intake and returned to her workstation before leaving for her lunch break. Ms. Dyson had previously informed her supervisor of her medical condition and had received specific authorization from her supervisor that it was approved to leave her workstation when necessary to purchase juice if she was feeling ill.

Near the end of her lunch time that day, Ms. Dyson was speaking with the union president in the plant about a work matter, the claimant returned to her workstation a few minutes late because neither she nor her union official could hear the signal ending the lunch period due to the level of background noise. Upon returning to her workstation, Ms. Dyson explained what had occurred to her supervisor. Prior to the claimant's discharge, while on FMLA leave, a corrective action report was completed by the claimant's supervisor. The corrective action report provided a narrative of the events of January 30, 2018, and offered the claimant the opportunity to avoid disciplinary action or termination by showing improvement.

Because of medical issues, Ms. Dyson did not report back to work following the January 30, 2018 incident. While absent on Family Medical Leave Act (FMLA), Ms. Dyson was informed that she had been discharged from employment. Claimant had not received any additional warnings from the company that she was subject to discharge because she had the active written warnings. Based upon the previous notation that a corrective action was "null and void," Ms. Dyson did not know that her job was in jeopardy.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes intentional job related misconduct to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

In the case at hand, the employer had previously sent the claimant a notice that she would be subject to discharge if she received an additional corrective action during a 12 month period. Subsequently, the employer noted however, a recent warning had been voided through grievance procedures. The claimant reasonably relied upon that representation from the company.

The two final incidents that resulted in the claimant's termination from employment took place when the claimant had to leave her workstation a few minutes early due to illness. The evidence establishes that her supervisor was aware of the claimant's medical problem and had given her specific authority to leave her workstation to obtain juice, if necessary. The evidence also establishes the claimant did not intentionally return to her workstation late that day because of background noise in the plant had prevented her and the union official from hearing that the lunch period had ended.

Based upon the evidence in the record, and the application of the proper law, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing intentional disqualifying misconduct on the part of this claimant. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated March 7, 2018, reference 01 is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn