

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

TAMMY J HARRIS  
APT 1  
603 E MAIN ST  
MARSHALLTOWN IA 50158

LENNOX MFG INC  
PO BOX 250  
MARSHALLTOWN IA 50158

Appeal Number: 05A-UI-04700-HT  
OC: 04/10/05 R: 02  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant, Tammy Harris, filed an appeal from a decision dated April 25, 2005, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on May 23, 2005. The claimant participated on her own behalf. The employer, Lennox, participated by Human Resources Assistant Kelly Shollendarger.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Tammy Harris was employed by Lennox from February 10, 1993 until April 13, 2005. She was a full-time line assembler.

In May 2004, the claimant and the employer entered into a last chance agreement in an attempt to preserve her job. The agreement specified she would be discharged if she were issued any "tickets" for any policy violations in the next 12 months.

The evening of April 7, 2005, the claimant was arrested and incarcerated for failing to pay outstanding fines, some of which dated back to 1993. Her brother and sister called her foreman, Tracy Wildman, at his home to say Ms. Harris would not be in the next day and requested that she be allowed to take a day of vacation to cover the absence. Mr. Wildman said he would deal with it the next day at work. The employer's policy indicates that reporting an absence does not automatically make it excused. In addition, employees on a last chance agreement must have all requests for time off approved by the end of the previous shift.

The claimant was released from jail the morning of Friday, April 8, 2005, and called Mr. Wildman. He said he was on his way to talk to Plant Manager Dick Tesser about the situation. When the claimant was at work on Monday, April 11, 2005, she was suspended indefinitely by Mr. Tesser pending a review of the situation. He then notified her by letter on April 13, 2005, that she was discharged for violating the last chance agreement.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 claimant had been advised her job was in jeopardy when she entered into the last chance agreement and knew that any violation of policy could lead to discharge. She was incarcerated for failing to pay outstanding fines, some of which were 12 years old. The absence was due to purely personal considerations and is not excused under the company policies. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). The claimant was discharged for conduct not in the best interests of the employer and she is disqualified.

#### DECISION:

The representative's decision of April 25, 2005, reference 01, is affirmed. Tammy Harris is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/pjs