

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELINDA G RAGONA
Claimant

APPEAL NO. 11A-UI-10293-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PROTEK MEDICAL PRODUCTS INC
Employer

OC: 06/19/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Protek Medical Products, Inc. (employer) appealed a representative's July 25, 2011 decision (reference 01) that concluded Melinda G. Ragona (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 25, 2011. The claimant participated in the hearing. Betty Sedlacek appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 5, 2008. She worked full-time as a graphic designer and marketing representative. Her last day of work was June 17, 2011. The employer discharged her on that date. The reason asserted for the discharge was not performing work as required.

There was no specific final incident that led to the discharge. The business manager had, in about July 2010, asked the claimant to put work needing his review on his desk at the end of the day, but when he never got back to the claimant with any feedback and the stack of material on his desk began building up, she ceased depositing that work product on his desk in about September 2010. She was never questioned or reprimanded for ceasing to put copies of the work product on his desk until she was discharged. The employer had never given the claimant any formal written warnings for any issues. She was not advised of any improvements she needed to make in her job performance to continue in her employment. She had been given a verbal warning in about May 2011, due to returning late from a lunch break.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The gravity of the final incident and the number of prior violations or prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

The reason cited by the employer for discharging the claimant is not performing her work as required. Conduct asserted to be disqualifying misconduct must be both specific and current. Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988); West v. Employment Appeal Board, 489 N.W.2d 731 (Iowa 1992). Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. The employer has not established there was a specific, current, and intentional violation, and has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 25, 2011 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw