

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**BARBARA PIERCE**  
Claimant

**APPEAL NO. 14A-UI-03342-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACOBSON STAFFING COMPANY LC**  
Employer

**OC: 02/16/14**  
**Claimant: Respondent (1)**

---

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jacobson Staffing Company, LC (employer) appealed an unemployment insurance decision dated March 19, 2014, (reference 02), which held that Barbara Pierce (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 21, 2014. The claimant participated in the hearing. The employer participated through Ruth Castor, Manager. Employer's Exhibit One was admitted into evidence.

**ISSUES:**

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for this temporary employment agency as a full-time machine operator/warehouse worker at Lee Container from September 3, 2013, through February 18, 2014, when she was discharged. Lee Container issued her five written warnings for attendance and the employer issued her two warnings. The claimant's termination was unrelated to her poor attendance but the disciplinary warnings were considered in the decision to discharge her. She was discharged after she brought a "weapon" on the work floor.

The claimant brought a pair of childproof scissors in her back pocket after she returned from her break on February 18, 2014. She testified that the scissors fell out of her car but she did not notice them until after she locked her car so put them in her pocket. The claimant saw a co-employee using her teeth to tear tape and she offered the scissors to her to help. Employees use box cutters on the work floor. The co-employee did not use the scissors and saw the claimant put them in her bag, but employees are not allowed to carry bags on the work floor. The claimant testified she had carried a bag on the work floor since her date of hire and no one said anything to her about it.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. 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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on February 18, 2014, for carrying scissors in her back pocket on to the work floor. The employer considered the scissors to be a weapon but the fact that the claimant offered them to her co-worker when she was cutting tape, demonstrates the claimant had no wrongful intent or evil design. 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.* While the claimant certainly exhibited poor judgment, her actions do not amount to disqualifying misconduct. Benefits are allowed.

**DECISION:**

The unemployment insurance decision dated March 19, 2014, (reference 02), is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/css