

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SYLVIA LOPEZ
Claimant

APPEAL NO: 12A-UI-00740-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

**OC: 12-11-11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 10, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 20, 2012. The claimant participated in the hearing. Emily White, member and community relations representative; Jose Sanchez, production group leader; and Sandy Linsin, employer's representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time work cell operator for The HON Company from December 24, 2000 to December 12, 2011. She was discharged for overall job performance. In January 2011 the employer moved the claimant to a different line with a different supervisor. On March 31, 2011, the claimant received a Performance Improvement Plan (PIP) regarding her work pace. On July 7, 2011, she received a final written warning after she was alleged to have inappropriately grabbed another employee several times and made "squeaking" noises after being told to stop and then placing an air gun against the other employee's shoulder. The claimant vehemently denies those accusations. On November 18, 2011, six mislabeled units were sent to the warehouse under the claimant's initials. Although the claimant testified she did not pack those units out, it was still ultimately her responsibility to use the verification process and insure the units were properly labeled. The warehouse caught the error within one to two weeks, and then the employer went through its internal process for determining whether the claimant's employment should be terminated. One person from that team was out of town for one week, so it took approximately one week and one day before the decision was made to terminate the claimant's employment for her error November 18, 2011, and the pace of her work. The claimant stated she always worked to the best of her ability but when she was transferred to the new line, she had a new supervisor who had "yelled at" her about her speed a

couple of times before and he made her very nervous and stressed and prevented her from working as fast as she was capable of, because she was afraid of making a mistake.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. 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). While the claimant did not meet the employer's expectations regarding the pace of her work, she persuasively testified she worked to the best of her ability but her supervisor made her very nervous, which affected how fast she worked. She did make an error November 18, 2011, which was her responsibility, regardless of who did the packing out. One mistake and a failure to work fast enough when working to the best of one's ability does not constitute disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The January 10, 2012, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw