

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE G BROWN
Claimant

APPEAL NO. 11A-UI-16525-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES BOLT SUPPLY INC
Employer

**OC: 11/27/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Des Moines Bolt Supply (employer) appealed a representative's December 22, 2011 decision (reference 01) that concluded Michelle Brown (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for February 8, 2012, in Des Moines, Iowa. The claimant participated personally. The employer participated by Stacey Lyman, Human Resources Manager, and James Martin, Sales Manager. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 13, 2009, as a full-time inside sales representative. She signed for receipt of the employer's handbook on November 30, 1999. The employer did not issue the claimant any warnings during her employment.

The employer let employees know that they should not take orders from a particular customer unless they had a purchase order number in writing. On October 10, 2011, that customer requested parts with a purchase order number by e-mail. The claimant notified her co-worker, Blake Johnson, that the customer wanted 10,000 parts. The co-worker was concerned that the employer was being asked to stock parts for which the customer might not be willing to pay and told the employer about his concerns.

On November 9, 2011, the claimant complained to the employer that her supervisor was harassing her at work. On November 22, 2011, the claimant followed company procedures and changed the order from 10,000 pieces to 1 piece as was done commonly done when parts were not in stock.

After doing this on November 22, 2011, the supervisor asked the claimant for a copy of the e-mail regarding the October 19, 2011, purchase order. The claimant asked if she should stay late to find the e-mail. The supervisor told her that she should not. Due to Thanksgiving and vacations, the supervisor and the claimant did not work together again until November 29, 2011. At that time the employer terminated the claimant for failure to provide the e-mail and for changing the order from 10,000 to 1.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide evidence of job-related misconduct. The claimant followed business practices and the employer's instructions. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 22, 2011 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css