IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

AMBER A VANDEVOORDE Claimant **PHOENIX CLOSURES INC** Employer	**APPEAL 14A-UI-03563-LT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/02/14** **Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the March 27, 2014, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on April 24, 2014. Claimant participated. Employer participated through warehouse shipping supervisor, Kevin Stoltenberg and Bob Gabrielsen of UCI represented the employer. Employer's Exhibit 1 (pages 2 through 10) was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a material technician from March 26, 2006, and was separated from employment on March 3, 2014. On the February 26 - 27 shift, machine operator Vicky verbally requested claimant to bring her a container or tote of resin for one of the machines, 15 feet apart, she was working on and gave her a work order number. Operators are supposed to put an order into the radio frequency system, which would then appear on the fork truck driver's scanner gun, but claimant's shift has never followed that procedure. Claimant typed the number Vicky gave her into the radio frequency scanner, went to the warehouse for the resin specific to that machine and work order, and scanned the container/tote at 12:27 a.m. Claimant had a habit of scanning the product into radio frequency system before bringing product to the production floor and has never had to bring two totes in one shift. There was no indication from the scanner it was incorrect so she brought it as close to Vicky's machine as possible since there was no room for claimant's fork truck. At that point, it is up to the machine operator to get a pallet jack to pick up the container and move it closer to the machine. That amount of resin lasts nine hours without much machine downtime. The only resin delivery claimant made that shift was at 12:27 a.m. The employer accused claimant of not scanning and delivering incorrect resin to Vicky at 4:00 a.m. Vicky used an incorrect resin type for a machine she was operating and was disciplined for failure to ensure the proper product was used. Numbers can change on work orders and product numbers throughout a shift. Because of this and the operator's failure

to input orders and changes into the radio frequency system, there is a verbal communication gap between written operator work orders to a fork truck driver work order.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job*

Serv., 391 N.W.2d 731 (Iowa Ct. App. 1986). The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. Mindful of the ruling in *Crosser*, *id.,* and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand witness reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer. Furthermore, the employer's credibility is questionable since the employer initially denied there were any other fork truck drivers on that shift but later said the male fork truck driver, Tyler, on that shift with claimant denied making a resin delivery to Vicky. The employer told claimant at discharge that two witnesses, Joe Wood and Tanner Loots, said they saw Vicky taking the resin tote with the pallet jack, not that they saw claimant on the fork truck delivering the resin as stated at hearing. Since claimant made the only resin delivery at 12:27 a.m., Vicky should not have needed another resin tote for nine hours, well beyond 4:00 a.m. when the employer alleged the incorrect tote was delivered and used. While there may have been incorrect resin used in one of Vicky's machines at some point after 4:00 a.m., claimant was not responsible for the error. The employer has failed to meet its burden of proof to establish a final or current act of misconduct. Benefits are allowed.

DECISION:

The March 27, 2014, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

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