

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRINITY A GAMBLE
Claimant

APPEAL NO. 12A-UI-10208-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

OC: 07/29/12
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Trinity Gamble, filed an appeal from a decision dated August 17, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 19, 2012. The claimant participated on his own behalf. The employer, Van Diest Supply, participated by Vice President of Manufacturing Lee Trask, Director of Manufacturing Clark Vold, Personnel Manager Carolyn Cross, Team Lead Scott Hamilton, Production Operator Darci Worthen, Production Operator Donna Johnson and was represented by Jeffrey Krausman. .

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Trinity Gamble was employed by Van Diest from March 11, 2008 until July 26, 2012 as a full-time production operator working 11:00 p.m. to 7:30 a.m. He received a copy of the employee manual outlining the company's policy and procedures. The information states an employee may be fired for insubordination, using profanity on the job or leaving without permission before the end of the shift.

On July 25, 2012, Team Lead Scott Hamilton had been assigned to supervise the production area where Mr. Gamble worked. As Mr. Hamilton was walking down the corridor which leads to the production area in that building, Mr. Gamble walked past him going the opposite direction, toward the outside door. Mr. Hamilton said "Hi," but the claimant did not respond.

Shortly after arriving in the production area and finding out about the work scheduled for that shift and the current status, Mr. Hamilton noticed Mr. Gamble was not present. The supervisor searched the area but did not find the claimant. He notified his supervisor, Kevin, to say Mr. Gamble could not be found. Eventually it was reported his truck was gone and he had apparently left the workplace.

The matter was investigated and two other production workers, who were present when Mr. Hamilton came in and Mr. Gamble left, were questioned. Both reported the same thing. As soon as the claimant saw Mr. Hamilton walk in he said, "I'm not working with him, I'm fucking going home." Then he walked out.

The matter was referred to Vice President of Manufacturing Lee Trask who interviewed Mr. Gamble the next night when he came into work at 11:00 p.m. The claimant denied using profanity and also that he had left without permission. He told Mr. Trask to talk to another production operator, Toy, and she would confirm he had asked for permission. The employer called Toy from her work site and questioned her in another room and she denied ever hearing Mr. Gamble ask for permission to leave.

When the claimant was confronted with Toy's statement he then asked Mr. Trask to view the video surveillance footage of the corridor and production area. This was viewed and nothing was found on the images to confirm Mr. Gamble had approached Mr. Hamilton for permission to leave. He was discharged.

REASONING AND CONCLUSIONS OF LAW:

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 claimant has denied all the allegations against him but could not provide any rational explanation why four people, Mr. Hamilton, Toy and the two production workers, would conspire

to make up this story to get him fired. The employer made every effort to give Mr. Gamble the benefit of the doubt by investigating another potential witness and the video surveillance at his request. Van Diest Supply has provided three eye witnesses to the event and the claimant has provide no one other than himself to corroborate his assertion he did not swear or leave without permission. This is insufficient in the face of the employer's eye witnesses.

The administrative law judge concludes the employer has met its burden of proof to establish the claimant was fired for profanity, insubordination and leaving the workplace without permission. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of August 17, 2012, reference 01, is affirmed. Trinity Gamble is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css