

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRITTNEY WILLISON**  
Claimant

**APPEAL NO: 12A-UI-14692-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**POWERS MANUFACTURING CO**  
Employer

**OC: 04/29/12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

A decision dated December 13, 2012, reference 04, was issued to Brittney Willison (claimant) which denied benefits based on a disqualifying separation from Powers Manufacturing Company (employer). The claimant did not appeal the decision but the Appeals Section inadvertently scheduled an appeal hearing with the claimant as the appellant. The employer had appealed a decision allowing benefits to the claimant's co-worker and this case was scheduled by mistake. However, hearing notices were mailed to the parties' last-known addresses of record and a telephone hearing was held on January 16, 2013. The claimant participated in the hearing. The employer participated through Dawn Lowe, Human Resources. Employer's Exhibits One through Four were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**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 employed as a full-time sewer from December 12, 2011 through November 12, 2012 when she was discharged for poor work performance. The employer manufactures athletic uniforms and provides daily assessments on new employees while they are in training. Employees can be in training up to 90 days. The claimant's skill and ability allowed her to be placed on the floor approximately one month after she was hired. She had a 30-day review on January 13, 2012; a 60-day review on February 15, 2012; and a 90-day review on March 12, 2012. The claimant's overall performance met expectations in all three reviews and she was taken off probation.

At that time, she was provided with and signed for the employer's handbook. The employer Section 8 Work Rules are divided into two groups. Group One Work Rules will usually not result in discharge unless there are repeated violations. Group Two Work Rules are serious violations

and may result in immediate discharge. Group Two Work Rule Number 6 addresses work performance not up to standard, inability to perform the job, and/or making repeated mistakes. The claimant signed for the employer's handbook on March 12, 2012 and on October 24, 2012, she signed for the handbook that was updated on September 1, 2012.

The claimant's work performance declined and she received a disciplinary warning on August 14, 2012. Unsatisfactory quality is not tolerated and the claimant was advised that improvement was required immediately. When an employee's work performance does not meet the quality standards, the sewing has to be taken apart and redone, which causes twice as much work.

The claimant was discharged on November 12, 2012 after seven weeks of unsatisfactory work quality. The work quality expectancy is 1.9 percent and the claimant's rates for the previous seven weeks were 2.0; 16.9; 8.4; 7.1; 2.1; 3.3; and 2.5. Since she is paid incentives, she was aware of her low performance. The claimant said she began having problems when she became pregnant in September 2012.

### **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.

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 to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on November 12, 2012 for violation of company policy due to her poor work performance. When an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Department of Job Service*, 386 N.W.2d 552 (Iowa App. 1986). The claimant had sufficiently demonstrated she had the skills to meet the employer's quality standards but simply failed to do so during the last two months of her employment. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated December 13, 2012, reference 04, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css

**NOTE TO EMPLOYER:**

If you wish to change your mailing address of record please access your account at: <https://www.myiowaui.org/UITIPTaxWeb/>.  
Helpful information about using this site may be found at:  
<http://www.iowaworkforce.org/ui/uiemployers.htm> and  
<http://www.youtube.com/watch?v=mpCM8FGQoY>