

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFFANY FORD
Claimant

APPEAL NO. 08A-UI-00065-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALANIZ LLC
Employer

OC: 12-02-07 R: 04
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 24, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 17, 2008. The claimant participated in the hearing with Jody McBeth, Stock Handler, and subpoenaed witness Cindy Cook, Coordinator. Rodney Stewart, Production Manager; Tony Huffman Supervisor; and Shelby Trautman, Human Resources Generalist, 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 machine operator for Alaniz LLC from September 18, 2006 to December 3, 2007. During the week of November 26, 2007, the claimant had personal problems with another employee. That employee “cornered” her in the restroom and the claimant told her to “leave her alone.” During the remainder of the week, the other employee spread rumors and lies about the claimant and the claimant was upset about the situation. Over the weekend, the other employee secured the claimant’s cell phone number and left her a “nasty” text message in which she called the claimant a bitch. On December 3, 2007, the claimant reported the situation to Production Manager Rodney Stewart and Mr. Stewart met with both employees individually. The claimant returned to her machine as did the other employee after she met with Mr. Stewart. The other employee appeared to tell a third employee about the meeting and he made faces and gestures toward the claimant. Approximately 10 to 15 minutes later the other employee approached the claimant’s area to get tape from a maintenance man working on the claimant’s machine. The claimant “lost it,” threw mail in the other employees face and hit her two times before the two were separated by other employees. The other employee did not strike the claimant during the incident. Afterwards, the claimant was escorted from the building and later called Mr. Stewart to ask if she still had a job and was told she did not. The employer’s policy states that fighting is cause for immediate termination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

While the other employee contributed, and may have instigated, the problem with the claimant prior to the fight, the claimant lost her temper and hit the other employee at least two times before being separated by other employees. The claimant was discharged from her employment for fighting with a co-worker. The claimant participated in the altercation and did not attempt to retreat. Although she had sought supervisor assistance prior to the incident, she let her temper get the best of her because the other employee entered her area. The other employee did not start the physical fight and did not do anything threatening or that could reasonably be considered good cause for the claimant to hit her. The administrative law judge must conclude the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The December 24, 2007, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw