

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHANIE C HUTCHINSON
Claimant

EXIDE TECHNOLOGIES
Employer

APPEAL 15A-UI-06992-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/31/15
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the June 11, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon the determination the claimant was terminated for not performing her job to the employer's satisfaction. The parties were properly notified about the hearing. A telephone hearing was held on July 22, 2015. Claimant Stephanie Hutchinson participated on her own behalf. Employer Exide Technologies participated through Human Resources Manager Fred Gilbert. Employer's Exhibit 1 was received and admitted into the record with no objection.

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: The claimant was employed full-time as a Quality Auditor beginning November 7, 2011, and was separated from employment on May 29, 2015, when she was terminated. The claimant worked the third shift. Her job required her to continually audit the manufacturing process on her assigned assembly line. A part of that auditing process included testing the epoxy at the beginning of the shift to ensure it was hardening properly before the batteries were manufactured.

On her shift beginning May 26, 2015, the claimant was auditing assembly line five. She found a cup of sample material next to the Operator's machine. She collected the sample as she always did and inspected it. The sample passed inspection. After the claimant's shift was over, the employer discovered that the batteries manufactured on assembly line five were assembled with epoxy that did not have the hardening agent added. The batteries that were improperly manufactured cost the employer over \$30,000.00.

The employer conducted an investigation into the incident. It interviewed all of the Operators, Managers, and other Quality Auditors. However, it did not interview the claimant. During the investigation the Operator working the machine on line five, stated he did not pull a sample that

evening. The employer determined that since he did not pull a sample, the claimant could not have tested the sample. The claimant was terminated for not testing the sample per the employer's "Inspection Procedure," which states the Quality Auditor must inspect "Anchor bond for proper set up time (Reference IP-10-8.2)." (Employer's Exhibit 1.) The identical language is also listed as a responsibility of the Operator. The Operator and Quality Auditor are both job classifications listed under the heading "Farmers Helper." Other employees were disciplined as a result of the incident; however, the claimant was the only employee terminated.

REASONING AND CONCLUSIONS OF LAW:

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

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in

disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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. 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer determined the claimant deliberately did not test a sample of the epoxy in violation of her written work responsibilities which caused an entire night's worth of production to be unusable. The employer relied on the statement of the Operator that he did not pull a sample that evening when reaching that conclusion. The employer did not provide a signed statement of the Operator, nor did he testify during the hearing. The information provided by the employer about what occurred during the shift was hearsay evidence provided by the Human Resources Manager. None of the written documents created during the normal course of business by the claimant or the Operator from May 26th regarding the sample were submitted for the hearing.

The issue of whether the claimant deliberately failed to test the sample or merely did not adequately perform her job duties is crucial to the determination of whether she engaged in disqualifying job-related misconduct. When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. 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). It is permissible to infer that the records related to the testing of the sample that evening were not submitted because they would not have been supportive of the employer's position. See, *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of what occurred on the evening of May 26th. No request to continue the hearing was made and no written statement of the individual was offered. Given the serious nature of the proceeding and the employer's allegations resulting in claimant's discharge from employment, the employer's nearly complete reliance on hearsay statements is unsettling. Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events of May 26th is more credible than that of the employer.

The claimant tested a sample on the evening of May 26th which she was required to do; however, at some point that evening she was part of a system of checks and balances that broke down and resulted in a large manufacturing loss to the employer. The conduct for which the claimant was discharged was an oversight and not a deliberate or intentional act. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Additionally, other employees charged with the same responsibilities were not terminated for their part in the employer's loss; thus the claimant seems to have been the subject of the disparate application of the disciplinary policy, which cannot support a disqualification from benefits.

DECISION:

The June 11, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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