

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA J HEASLEY
Claimant

APPEAL NO. 11A-UI-09795-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A Y M INC
Employer

**OC: 04/24/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 24, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on August 17, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with her attorney, Michael Carpenter. Marlene Dobraska participated in the hearing on behalf of the employer with a witness, Chris Clark.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a machine operator from May 5, 2008, to June 23, 2011. The claimant was informed and understood that under the employer's policies, no one other than an engineer was permitted to change the speed of the CNC lathe machine. The policy prevents a worker from increasing the speed of the machine which shortens the life of the equipment.

The claimant had received a final warning on May 13, 2010, for using profanity and engaging in horseplay. She received a final warning in August 24, 2010, for causing a machine she was working on to breakdown.

On June 14, 2011, the claimant increased the speed of the CNC lathe machine from 100 percent to 120 percent in willful violation of company policy. She did this so she could put out more parts. When an engineer asked the claimant about this, the claimant alleged the machine was set at 120 percent before she started using the machine.

The engineer then began monitoring the machine at shift change to eliminate the possibility that someone else was increasing the machine speed. The engineer discovered the claimant had increased the speed of the machine again on June 20 and 21. On June 21, the claimant did not have a part correctly aligned in a machine and the machine broke down.

On June 22, the incidents discovered by the engineer were reported by management. The claimant was questioned about the incidents on June 23 and admitted to changing the speed of the machine, but not on every day the employer had cited. The employer discharged the claimant for willfully violating the policy against adjusting the speed, causing the breakdown of the machine on June 21, and her past record of discipline.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I do not believe the claimant's testimony that she only increased the speed on June 14 and not later. The employer's evidence that she blamed someone else for the first incident and then then monitored the situation to rule out other workers and discovered further incident of increased speed is much more believable.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated April 24, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs