

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KRYSTAL M STRELOW

Claimant

IOWA ROTOCAST PLASTICS INC

Employer

APPEAL NO. 19A-UI-07584-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/25/19

Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 17, 2019, reference 01, decision that held the claimant was eligible for benefits provided she met all other eligibility requirements and that employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on August 27, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on October 16, 2019. Claimant Krystal Strelow participated. Troy Hagensick represented the employer and presented additional testimony through Carl Naley and Heather Mount. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 10 into evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant was overpaid unemployment insurance benefits.

Whether the claimant must repay overpaid benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Krystal Strelow was employed by Iowa Rotocast Plastics, Inc. as a full-time quality control employee from 2015 until August 27, 2019, when Troy Hagensick, Assembly Supervisor, discharged her from the employment. Mr. Hagensick became Ms. Strelow's immediate supervisor in April 2019. The employer manufactures camping coolers. Ms. Strelow's duties involved checking the coolers for manufacturing defects and removing defective coolers from production. On average, Ms. Strelow would inspect 250 to 300 coolers per day. Ms. Strelow received appropriate training to perform her work duties. The employer provided Ms. Strelow with a checklist of defects to check for when she was performing the quality control inspection. Ms. Strelow was given one minute on average to inspect each cooler for obvious defects. Ms. Strelow was the only first level production employee performing the quality control work. If

Ms. Strelow spotted a manufacturing defect, she was expected to alert a supervisor and have the supervisor inspect the product. The supervisor would then determine whether the product would be pulled from production or be allowed to continue in production and be distributed to the customer. For each cooler that passed the quality control inspection, Ms. Strelow was required to initial and date the warranty card that would accompany that cooler. In those instances, wherein the supervisor also inspected the product, the supervisor would not initial or date the warranty card.

The final incident that triggered the discharge occurred on August 26, 2019. On that day, Ms. Strelow summoned Mr. Hagensick to assist with inspecting a group of five coolers. Mr. Hagensick told Ms. Strelow that he was passing one of the coolers and rejecting the other four. Mr. Hagensick's expectation, based on standard operating procedures, was that Ms. Strelow would set aside the four coolers that failed inspection. Instead, Ms. Strelow allowed all five coolers to proceed through production. Ms. Strelow initialed and dated the warranty cards for the coolers and added "Approved by TH." Mr. Hagensick had not approved more than one of the coolers and had not authorized Ms. Strelow to add his initials to the warranty card. Later in the shift, Mr. Hagensick returned to Ms. Strelow's work area and asked where she had placed the four rejected coolers. Ms. Strelow stated that the coolers had been boxed for shipping. Mr. Hagensick reminded Ms. Strelow that he had not wanted the coolers to be shipped. Mr. Hagensick located the boxed coolers, reviewed the warranty cards, and saw that Ms. Strelow had indicated on the warranty cards that he had approved the coolers.

This final incident followed two other recent incidents that also factored in the discharge decision. On August 12, 2019, Ms. Strelow had inspected and passed a cooler that had deep scratches along the length of the cooler. On August 22, 2019, the customer contacted Iowa Rotocast Plastics and provided photos of the defective cooler. Mr. Hagensick reviewed the warranty card, which bore Ms. Strelow's dated initials to indicate that she had inspected and passed the cooler. Mr. Hagensick spoke with Ms. Strelow about the defective cooler, but Ms. Strelow did not recall seeing the scratches on the cooler. The company mailed a new cooler to the customer on August 22, 2019, after Mr. Hagensick told Ms. Strelow to be certain the new one was without defect before it was shipped. On August 15, 2019, Ms. Strelow had inspected and approved a cooler despite a readily obvious defect in the placement of the hinge holes through which the connecting rod would be placed to hold the lid to the body of the cooler. When the cooler was fully assembled the manufacturing defect prevented the lid of the cooler from sealing. The defect came to Mr. Hagensick's attention on August 23, 2019 when the customer returned the defective cooler.

Mr. Hagensick concluded that Ms. Strelow had violated multiple work rules in connection with the three matters that factored in the discharge. The work rules were set forth in the Code of Conduct policy the employer provided to Ms. Strelow at the start of her employment. The employer's work rules prohibited neglect of duty and indicated that such conduct would result in a warning, suspension or termination of the employment. Mr. Hagensick concluded that each of the matters in question involved neglect of duties. The employer's work rules prohibited falsifying documents. Mr. Hagensick concluded that the final incident wherein Ms. Strelow passed coolers that he had rejected and added his initials to the warranty cards was a falsification of documents. The employer had not issued any reprimands to Ms. Strelow prior to discharging her from the employment.

Ms. Strelow established an original claim for benefits that was effective August 25, 2019 and received \$2,310.00 in benefits for seven weeks between September 8, 2019 and October 26, 2019. This employer is the sole base period employer.

On September 13, 2019, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Ms. Strelow's separation from the employment. Mr. Hagensick represented the employer at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge

considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The administrative law judge found elements of Ms. Strelow's testimony misleading and not credible. For example, the weight of the evidence establishes that Ms. Strelow knew she was not supposed to put the supervisor's initials on the warranty card and was specifically told at the time of discharge that the employer deemed that act to be falsification of a document. In addition, Ms. Strelow's assertion that she could not detect readily obvious manufacturing defects despite doing the same work duties for two and a half years was simply implausible. The employer's testimony did not present any similar credibility concerns.

The weight of the evidence in the record establishes a discharge for misconduct in connection with the employment. The essence of Ms. Strelow's quality control job was to ensure that the employer's coolers left the manufacturing facility without defects. Ms. Strelow received proper training. The employer allotted sufficient time for Ms. Strelow to inspect each cooler for obvious defects. Ms. Strelow's dated initials on the warranty card were supposed to ensure that the product had been properly inspected and that the product passed the quality inspection. The employer's decision to discharge Ms. Strelow from the employment was based on three instances in a two-week period wherein Ms. Strelow allowed obviously defective product to progress through the manufacturing process and reach the point where it was either shipped to the customer or about to be shipped to the customer. In the final instance, Ms. Strelow unreasonably disregarded Mr. Hagensick's determination that only one of the five coolers in question met quality standards and his reasonable directive that the other four coolers be removed from production. To make matters worse, on August 26, 2019, Ms. Strelow indicated on the warranty cards for the defective coolers had been inspected and approved by Mr. Hagensick when she knew that was not the case. The pattern of carelessness and negligence conduct evidenced by these three incidents, along with disregarded directive and the dishonesty element involved in the final incident, were enough to establish an intentional and substantial disregard of the employer's interests.

Because the administrative law judge concludes Ms. Strelow was discharged for misconduct in connection with the employment, she is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Strelow must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Ms. Strelow received \$2,310.00 in benefits for the seven weeks between September 8, 2019 and October 26, 2019, but this decision disqualifies her for those benefits. Accordingly, the benefits Ms. Strelow received constitute an overpayment of benefits. Because the employer participated in the fact-finding interview, Ms. Strelow is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

DECISION:

The September 17, 2019, reference 01, decision is reversed. The claimant was discharged on August 27, 2019 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$2,310.00 in benefits for the seven weeks between September 8, 2019 and October 26, 2019. The claimant must repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn