

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GUADALUPE PENA
Claimant

APPEAL NO. 07A-UI-04700-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENNOX MFG INC
Employer

**OC: 11/12/06 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Guadalupe Pena filed an appeal from a decision of a representative dated May 3, 2007, reference 02, which denied benefits based upon his separation from Lennox Manufacturing. After due notice, a telephone conference hearing was scheduled for and held on May 24, 2007. The claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issues in this matter are whether the claimant quit for good cause attributable to the employer or whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from November 14, 2004, until March 9, 2007, when his employment ended. Mr. Pena worked as a full-time production worker and was paid by the hour.

Mr. Pena was suspended from work without pay effective February 7, 2007, based upon the false allegation of a female employee that the claimant had intentionally discarded a soft drink container that had hit the female employee. Mr. Pena had an ongoing personal problem with the female employee and had reported to management on numerous occasions that he was being harassed by the female worker. The employer took no action. Subsequently, based upon the female worker's inaccurate report of the circumstances regarding the soft drink container, Mr. Pena was suspended without pay pending discharge. Subsequently, the claimant discontinued the grievance process, as he had been suspended from work and was not being paid for weeks and needed to find other employment to sustain his needs. The employer indicated they would not contest his claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the claimant's separation from employment that took place on March 9, 2007, took place under non-disqualifying conditions. The claimant had been suspended from work without pay for an extended period and

effectively had been separated from employment. Based upon the suspension from work without pay for an extended period, Mr. Pena reasonably concluded that he needed to seek other employment to fulfill his financial needs and discontinued disputing the employer's decision to separate him from employment. Mr. Pena testified under oath that he engaged in no intentional conduct toward the female worker that was disregard of the employer's interests or standards of behavior. The claimant further testified that he had gone to the company repeatedly about problems with this individual; however, the employer had been unwilling or unable to assist.

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.

For the reasons stated herein, the administrative law judge finds that the claimant was discharged by the employer under non-disqualifying conditions effective March 9, 2007. At that time the claimant discontinued any efforts through the grievance process to be reinstated or rehired by the company in hopes that he would find new employment or be able to receive unemployment insurance benefits until new employment was found. The claimant's discharge was under non-disqualifying conditions. Benefits are allowed.

DECISION:

The representative's decision dated May 3, 2007, reference 02, is reversed. The claimant was discharged under non-disqualifying conditions and is eligible to receive unemployment insurance benefits, provided that he meets all other eligibility requirements of the law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw