

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN E TITUS
Claimant

APPEAL NO. 11A-UI-12980-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

POLARIS INDUSTRIES MANUF LLC
Employer

**OC: 12/26/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Polaris Industries filed a timely appeal from an unemployment insurance decision dated September 26, 2011, reference 03, that allowed benefits to Dawn E. Titus. After due notice was issued, a telephone hearing was held October 24, 2011 with Ms. Titus participating. Human Resources Generalist Kim Phillips participated for the employer.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Dawn E. Titus was employed as an assembler by Polaris Industries from October 4, 2010 until she was discharged August 22, 2011. The final incident occurred on the date of discharge. Ms. Titus called her supervisor a “fucking asshole” for assigning her to a task that caused her pain. The statement was made out of frustration. The claimant was preparing to do as instructed.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does not.

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.

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.

The employer has the burden of proof. See Iowa Code § 96.6-2. Isolated instances of poor performance or poor behavior are not considered to be misconduct according to the definition above. The administrative law judge concludes from the testimony that the discharge occurred under such circumstances. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated September 26, 2011, reference 03, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs