

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICOLE M STEVENS**

Claimant

**APPEAL NO. 14A-UI-00375-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLMAN DYNAMICS CORP**

Employer

**OC: 12/15/13**

**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated January 7, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on February 4, 2014. Claimant participated. Participating as witnesses for the claimant were: Mr. John Feick, Mr. Mike Albrechtsen, and Ms. Kirstin Smith. Although duly notified, the employer's witness was not available at the time of hearing. Three messages were left, however, the employer did not respond.

**ISSUE:**

The issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds Nicole Stevens was employed by Wellman Dynamics Corp. from August 16, 2011 until December 16, 2013 when she was discharged from employment. Ms. Stevens was last employed as a full-time x-ray processor and was being paid by the hour. Her immediate supervisor was Chris Gable.

Ms. Stevens was discharged on December 16, 2013 for an incident that had taken place on December 11, 2013. On that date, the claimant had mistakenly removed a wrapped sandwich from a common refrigerator used by all employees in the lunchroom. Ms. Stevens believed that the wrapped sandwich that she was removing was one that had been placed there by Kirstin Smith. Ms. Stevens and Ms. Smith had agreed to split the sandwich that day and the claimant believed that the sandwich she had removed was that sandwich. A few minutes later when another employee appeared to be looking in the refrigerator for his lunch, the parties exchanged information and Ms. Stevens concluded that she may have inadvertently taken the wrong sandwich. Ms. Stevens paid the other employee for the value of the sandwich and the matter appeared to have been resolved.

It appears that the matter was rekindled the following day when another worker kiddingly asked the male worker if he had marked his lunch that day. The matter was then brought to the attention of the company's attention by the other worker. The company suspended the claimant and the other female worker and discharged Ms. Stevens when she returned from suspension.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code section 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 in establishing job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not always serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be "substantial."

The administrative law judge concludes based upon the evidence in the record that Ms. Stevens did not intentionally misappropriate the property of another company employee in violation of company rules. The evidence establishes the claimant inadvertently picked up the wrong sandwich that another worker had agreed to split with Ms. Stevens that day. The claimant acted reasonably when it appeared that the sandwich might be the property of another worker. The claimant apologized and made restitution to the worker explaining the mistake. There being no evidence to the contrary, the administrative law judge concludes that the claimant did not intentionally violate a known company rule. The claimant had not been warned or counseled about similar conduct in the past.

The question is not whether the employer has a right to discharge an employee for this reason or no reason whatsoever. The question is whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Ms. Stevens may have been a sound decision from a management viewpoint, the evidence in the record does not establish intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated January 7, 2014, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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