

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBBIE GAVRONSKY**  
Claimant

**APPEAL NO: 14A-UI-04738-E**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CURWOOD INC**  
Employer

**OC: 04/13/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 7, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on May 27, 2014. The claimant participated in the hearing. The employer did not appear for the hearing or request a postponement of the hearing as required by the hearing notice. Claimant's Exhibits A, B and C were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time plate maker for Curwood Inc. from February 8, 1995 to April 17, 2014. She was discharged for an alleged safety violation.

At the beginning of April 2014, the claimant was working on a Kodak Thermoflex Wide II Laser. She was speaking to a representative for Kodak who asked her to remove the access panel on the back of the machine to look at the control board. There is a power button and circuit breaker on the side of the machine and that area of the machine contains the electrical parts of the laser. Kodak's literature for platesetters states, "Do not open the platesetter more often than is absolutely necessary. Opening access panels is unavoidable but should be kept to a minimum to reduce the accumulation of dust in and around sensitive components" (Claimant's Exhibit A). Two electronic technicians (E-techs) assisted the claimant. Once the access piece is off the machinery employees are not allowed to leave it unless wiping off the area or if there is a shift change, at which time the area supervisor is notified and insures the machine is not accessible until the next shift and plate maker takes over. The claimant did not leave the machine and it was not shift change.

The employer conducted an investigation into the situation and the claimant first spoke with the area manager and health and safety manager. One week later she was called to the front office by Area Manager Robert Jamison, Plant Manager Tom Herman and Human Resources

Manager Nina Beriner and her employment was terminated for opening an electrical cabinet on the Kodak Thermoflex Wide II Laser. The claimant had not received any previous verbal or written warnings and earned an "exceeds expectations" on her last evaluation.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for opening the electrical cabinet on the side of the machine in question but she credibly testified that in actuality she opened the access panel on the rear of the machine at the direction of the Kodak representative she was working with on the phone. When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not establish disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits are to be allowed.

**DECISION:**

The May 7, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css