

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHERINE S LAU
Claimant

APPEAL NO. 07A-UI-08006-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOLDED PRODUCTS INC
Employer

OC: 07/15/07 R: 01
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Catherine Lau filed an appeal from a representative's decision dated August 15, 2007, reference 01, which denied benefits based on her separation from Molded Products, Inc. After due notice was issued, a hearing was held by telephone on September 5, 2007. Ms. Lau participated personally and offered additional testimony from Kristina Bunker. Exhibit A was admitted on Ms. Lau's behalf. The employer participated by Crystal Smith, Human Resources Director.

ISSUE:

At issue in this matter is whether Ms. Lau was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Lau was employed by Molded Products, Inc. from March 15, 2006 until July 17, 2007 as a full-time machine operator. The employer met with Ms. Lau and her coworker, Kristina Bunker, on July 17, 2007 regarding a discrepancy in parts. Present for the meeting were David Tyrell, Vice President, J.R. Messinger, Supervisor, and Crystal Smith, Human Resources Director.

The employer opened the meeting by questioning why the weight for parts produced on the day shift were different when weighed after Ms. Lau's and Ms. Bunker's night shift. When the two indicated they did not know what Mr. Tyrell was talking about, he explained that bags of parts were weighed the day before prior to their shift and again the morning after their shift. He explained that the bags weighed three pounds less the morning after their shift. Ms. Lau denied that she had any reason to steal parts from the day shift's production. Mr. Tyrell expressed his belief that Ms. Lau and Ms. Bunker were not being fully productive during their shift and taking parts from the day shift to give the appearance that they had worked throughout their shift. Ms. Lau and Ms. Bunker were advised that their shift was being eliminated and that they would have to transfer to the first shift.

During the meeting, Ms. Lau asked Mr. Tyrell how long there had been a discrepancy in parts. When Mr. Tyrell said she should tell him how long, Ms. Lau indicated she did not know “what the hell” he was talking about. She and Ms. Bunker continued to indicate that they had done nothing wrong and that the employer was being unfair. The parties continued to discuss which other employees had access to the building and parts and whether other individuals had a motive to mix the parts. Ms. Bunker asked when the two should go to first shift and Mr. Tyrell explained that he only had one position available in the building they were in and, therefore, one of them would have to go to a different building. Ms. Lau indicated she did not want to go to the other building because she would “butt heads” with Donna. Ms. Bunker indicated she was not going to Donna’s building either.

When Ms. Lau and Ms. Bunker indicated they were not going to work for Donna, Mr. Tyrell indicated he wanted their resignations because he could not have them work there with their attitude. Ms. Lau indicated that, given the manner of his approach, he was not trying to work with them. Mr. Tyrell stated he was trying hard to work with them, to which Ms. Lau responded “bullshit.” Mr. Tyrell indicated that she had made it impossible to continue the employment and that she should sign the resignation. Ms. Lau declined to sign the resignation and indicated she did not trust Mr. Tyrell “with a ten-foot pole.” She stated that he would say one thing and do another. At that point, she was terminated from the employment. The parties continued to argue about work-related matters after this point.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Lau was discharged solely as a result of the conversation with the employer on July 17, 2007. She was not discharged as a result of any discrepancy in parts. Prior to being discharged, Ms. Lau indicated to Mr. Tyrell that she did not know “what the hell” he was talking about in terms of a parts discrepancy. She also told him it was “bullshit” when he stated he was trying to work with the two of them. Her statements were made in a closed meeting and not in the presence of a group of employees so as to undermine Mr. Tyrell’s authority in the workplace.

It is unreasonable to expect employees to be docile and well-mannered at all times. Ms. Lau was reacting to a situation in which she was being accused of stealing parts from a prior shift. Under the circumstances, the single “hot-headed” incident of July 17 did not evince a willful or wanton disregard of the employer’s standards. Ms. Lau did not state that she found Mr. Tyrell untrustworthy until after he told her she had made it impossible to continue in the employment. She may have made other inappropriate comments during the meeting but, they were made after she was notified of her discharge.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to establish substantial misconduct. While the employer may have had good cause to discharge Ms. Lau, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reason stated herein, benefits are allowed.

DECISION:

The representative's decision dated August 15, 2007, reference 01, is hereby reversed. Ms. Lau was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs