

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**KELLI MORGAN
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201 - 3RD AVE
BEAMAN IA 50609**

**LENNOX MFG INC
PO BOX 250
MARSHALLTOWN IA 50158**

**Appeal Number: 06A-UI-01995-BT
OC: 03/27/05 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32 (9) – Suspension/Disciplinary Layoff

STATEMENT OF THE CASE:

Kelli Morgan (claimant) appealed an unemployment insurance decision dated February 15, 2006, reference 02, which held that she was not eligible for unemployment insurance benefits because she was disciplinary suspended from Lennox Manufacturing, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 8, 2006. The claimant participated in the hearing. The employer participated through Dick Tesar, Operations Coordinator and Holly Lindsay, Human Resources Support.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time assembler from January 19, 1998 through January 20, 2006, when she was suspended for violation of the last chance agreement. The claimant had four warnings within an 18 month time period, which are grounds for termination. Instead of terminating her, the employer allowed the claimant to sign a last chance agreement on May 23, 2005. This agreement advised the claimant she would be terminated if she violated any provision of the current labor agreement or any provision of the last chance agreement. The claimant was suspended on January 20, 2006 for two rule violations: she was out of her work area and she used the phone without authorization. The claimant contends the whole line was her work area since she floated but the employer disputed this contention and confirmed the claimant's work area was where she was working on any particular day. The claimant admitted using the phone but claims she had her group leader's permission. However, the group leader is not her supervisor and the policy requires that a supervisor must give permission for an employee to use the phone.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined in this matter is whether the claimant's disciplinary suspension was for any disqualifying reason. Where an individual is unemployed as a result of a disciplinary suspension imposed by the employer, the individual is considered to have been discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9). An individual who was discharged or suspended for misconduct is disqualified from receiving job insurance benefits. See Iowa Code section 96.5-2-a. 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was suspended for violating the last chance agreement she signed on May 23, 2005. She violated two work rules on January 20, 2006 when she was out of her work area and used the telephone without first getting her supervisor's permission. The claimant's violation of known work rules was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated February 15, 2006, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

sdb/tjc