

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN G CLARK

Claimant

APPEAL NO: 14A-UI-06183-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

ATLAS HYDRAULICS INC

Employer

OC: 05/11/14

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

Susan G. Clark (claimant) appealed a representative’s June 3, 2014 (reference 03) decision that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Atlas Hydraulics, Inc. (employer). After hearing notices were mailed to the parties’ last-known address of record, an in-person hearing was held on July 15, 2014. The claimant participated in the hearing and presented testimony from one other witness, Steven Clark. Derik Sulzle appeared on the employer’s behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Is the employer’s account subject to charge?

OUTCOME:

Reversed. Benefits allowed. Employer’s account is not subject to charge in current benefit year.

FINDINGS OF FACT:

The claimant started working for the employer on April 22, 2014. She worked full time as a production worker at the employer’s Newton, Iowa hydraulic hose manufacturing facility. Her last day of work was May 12, 2014. The employer discharged her on that date. The reason asserted for the discharge was refusing to perform work as assigned, as well as issues relating to the claimant’s lack of speed in performance.

The final incident which triggered the decision for discharge was on May 12, the claimant was speaking with her line lead about what additional work she should go to after finishing one work assignment. The line lead indicated that she should go to the blowing/capping area.

However, the claimant saw that a new employee was working in that area; she had prior issues with that employee because he wore his pants very low so that they hung low across his buttocks. She had previously asked him to pull up his pants, but he would not. She had previously informed the employer that she found this appearance to be offensive to the point of creating a hostile work environment for her, but the employer had not addressed the issue with the employee. There had been an incident between the claimant and this employee on May 10 in which the claimant was ultimately placed in a work area where she would not be within a line of sight of the employee.

When on May 12 the line lead indicated that the claimant should go to work in the area that this employee was working, the claimant said that she could not because this employee was there and he would not pull up his pants. She indicated that she could work elsewhere, such as labeling, but not where she could see this employee. However, when this was reported to the plant manager, Sulzle, he determined that because of this issue as well as the performance issues, she should be discharged. The claimant had not been given any formal or written warnings that her job was in jeopardy.

The claimant established an unemployment insurance benefit year effective May 11, 2014.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The gravity of the incident and the number of prior violations or prior warnings are factors considered when analyzing misconduct. The lack of a current or effective warning may detract from a finding of an intentional policy violation.

The reason cited by the employer for discharging the claimant is the refusal to work in the area with the other employee as well as her slow work performance. Refusal to perform a specific task as directed can constitute misconduct, but this must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. IDJS*, 367 N.W.2d 300 (Iowa App. 1985). Failure to perform a specific task does not constitute misconduct if that failure is in good faith or for good cause. *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768 (Iowa App. 1982). Here, the claimant had a good faith objection to being exposed to the employee who wore his pants low across his buttocks; her refusal to work in that area because of this was not insubordination or misconduct. As to her slow work performance, misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. There is no evidence the claimant intentionally worked more slowly than she was able.

While the employer may have had a good business reason for discharging the claimant, it has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began January 1, 2013 and ended December 31, 2013. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's June 3, 2014 (reference 03) decision is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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