

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

KATHY G BOYLE  
1100 GRANT ST  
DENVER IA 50622-9544

OMEGA CABINETS LTD  
1205 PETERS DR  
WATERLOO IA 50703

Appeal Number: 06A-UI-02086-JTT  
OC: 01/22/06 R: 03  
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

STATEMENT OF THE CASE:

Claimant Kathy Boyle filed a timely appeal from the February 10, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 9, 2006. Claimant participated. Human Resources Representative Chase Thornburgh represented the employer and presented additional testimony through Transportation Manager Dan Oltrogge. Exhibits One and Two were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kathy Boyle was employed by Omega Cabinets as a full-time traffic clerk from February 3, 1997 until

January 20, 2006, when Human Resources Representative Chase Thornburgh and Traffic Manager Dan Oltrogge discharged her. Ms. Boyle's responsibilities included performing federally-mandated audits of drivers' hours of service. Ms. Boyle's responsibilities also included auditing and reconciling driver reimbursement receipts.

The final instance that prompted the discharge occurred on January 19, 2006. On that day, Mr. Oltrogge discovered that Ms. Boyle had not only made an unauthorized change in the process of auditing the drivers' hours of service, but has also lied to Mr. Oltrogge about it. The employer performed random audits of drivers' hours of service to ensure compliance with D.O.T. safety requirements. Ms. Boyle was supposed to use a random process to select a driver to be audited for Department of Transportation purposes. The established practice had been to pull a name out of a hat. A week before Ms. Boyle was discharged, Mr. Oltrogge had asked Ms. Boyle how she was choosing a driver to audit. Mr. Oltrogge suspected Ms. Boyle had made an unauthorized change to the procedure. Ms. Boyle told Mr. Oltrogge that she was pulling a name out of a hat to choose a driver at random. Ms. Boyle knew this was not true when she uttered the statement to Mr. Oltrogge. On January 19, Mr. Oltrogge met with Ms. Boyle to review the process she used to perform the random audits. Ms. Boyle admitted at that time that she had changed the procedure one year earlier and had been choosing a driver to audit based which driver(s) had submitted all of the necessary paperwork. Ms. Boyle had known for the previous year that she had made an unauthorized change to the procedure and was not following the correct procedure.

Mr. Oltrogge had also discovered that Ms. Boyle had changed the process of auditing and reconciling driver reimbursement receipts. Ms. Boyle was supposed to enter the receipt amounts into an adding machine to generate a tape that could be reviewed by others further along in the process. More than a year prior to Ms. Boyle's discharge, she had run out of the adding machine tape and never bothered to order more. Ordering more tape could have been accomplished through a brief e-mailed request.

The employer had eased the burden on Ms. Boyle by hiring additional staff to assume some of her responsibilities. The employer continued to see an excessive number of errors in Ms. Boyle's work product that were attributable to carelessness.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Boyle was discharged for misconduct in connection with the employment. It does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

The evidence in the record establishes that Ms. Boyle acted with willful and wanton disregard of the employer's interests when she intentionally misled the employer about the procedure she used to audit drivers' hours of service. The evidence further establishes that Ms. Boyle demonstrated a pattern of carelessness and/or negligence so recurrent as to indicate a willful and wanton disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Boyle was discharged for misconduct. Accordingly, Ms. Boyle is disqualified for benefits 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. The employer's account shall not be charged for benefits paid to Ms. Boyle.

DECISION:

The Agency representative's decision dated February 10, 2006, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

jt/tjc