IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TAMMIE L POKORNY
Claimant

DEERE & COMPANY (01-RG)
ENGINE WORKS
Employer

APPEAL NO. 10A-UI-06876-S2T

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 08/23/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Deere & Company (employer) appealed a representative's April 27, 2010 decision (reference 03) that concluded Tammie Pokorny (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 29, 2010. The claimant participated personally. The employer participated by Matt Nolte, Labor Relations Administrator.

ISSUE:

The issue is whether the claimant was separated from employment on April 20, 2010, for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on April 9, 2007, as a full-time production worker/assembler. She received a copy of the union contract. The employer issued the claimant a written warning in January 2009 for working unauthorized overtime. The claimant started work ten minutes early to try to get extra work complete. On February 19, 2009, the employer issued the claimant a three-day suspension for failure to follow instructions. On June 3, 2009, the employer issued the claimant a two-week suspension for a safety violation.

On March 2, 2010, the employer issued the claimant a thirty-day suspension for failure to put screw caps on the cab at her station. The cab would not move to the next station without the screw caps unless a foreman or the co-workers in front of her manually released the cab. The claimant and others complained about the issue, but the claimant still received the suspension. She was gone from March 2 to 31, 2010.

When the claimant returned, coworkers swore at her. Some did not perform their work and so she had to perform their work and hers. Some coworkers taped things over so she could not attach her parts. She frequently had to call for help. On April 9, 2010, the employer gave the

claimant a new tool to use. She was expected to use the tool proficiently immediately. Within the first three hours, she forgot to use the tool twice. The claimant filed a hostile work environment complaint through her foreman and the union steward. The employer removed her from her job and told her to sweep the floor. On April 20, 2010, the employer held a hearing to look at the claimant's failure to use the new tool on April 9, 2010. The employer terminated the claimant on April 9, 2010, before it investigated the claimant's hostile work environment complaint.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not separated from the employer on April 20, 2010, for any 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.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work

performance was a result of her lack of training and experience with the new tool. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 27, 2010 decision (reference 03) is affirmed. The employer has not met its burden proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw