

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUTUMN M BACKES

Claimant

APPEAL NO. 15R-UI-05388-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXIDE TECHNOLOGIES

Employer

OC: 01/11/15

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Exide Technologies (employer) appealed a representative's February 11, 2015, decision (reference 02) that concluded Autumn Backes (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 11, 2015. The claimant participated personally and through Rachel Vigen, a former co-worker. The employer participated by Fred Gilbert, Human Resources Manager, and Julie Christensen, Environmental Health and Safety Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on July 11, 2013, as a full-time environmental compliance technician. The facility usually has about three hundred people working over three shifts. The claimant normally works with two other people. The claimant signed for receipt of the employer's handbook on July 11, 2013. On January 22, April 9, August 6, 2014, the employer issued the claimant written warnings for failure to follow instructions. The employer notified the claimant each time that further infractions could result in termination from employment. One of the warnings was for having a cell phone at work when the employer did not have a cell phone policy.

On December 28, 2014, the claimant worked from 6:00 p.m. until 6:00 a.m. on December 29, 2014. She was the only worker in the facility, except for the maintenance crew. There was a problem with the system and the waste water treatment was not working correctly. There was too much acid in the water. The maintenance crew was trying to help the claimant when the environmental health and safety manager did not answer her telephone. The claimant called the first shift technician five times and he finally answered and helped her. In the midst of this

the claimant washed and replaced a filter. The claimant typed “new” on the computer record rather than the word “washed.”

On January 7, 2015, the employer discovered the claimant did not put a new filter in place on December 28, 2014. On January 16, 2015, the employer terminated the claimant for falsifying the company’s records.

The claimant filed for unemployment insurance benefits with an effective date of January 11, 2015. The employer did not participate in the fact-finding interview on February 10, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep’t of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance

benefits. Such misconduct must be “substantial.” Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The claimant was working alone in the facility with only the maintenance workers. She was trying to avoid a major problem and perform the functions of her job. She accidentally wrote down the wrong word unintentionally. The employer did not meet its burden of proof to show intentional misconduct. Benefits are allowed.

DECISION:

The representative’s February 11, 2015, decision (reference 02) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css