

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA J COLEMAN
Claimant

APPEAL NO: 12A-UI-13864-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TIMBERLINE MANUFACTURING COMPANY
Employer

OC: 10/14/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Samantha J. Coleman (claimant) appealed a representative's November 15, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Timberline Manufacturing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 11, 2013. The claimant participated in the hearing, was represented by Charles Litow, attorney at law, and presented testimony from one other witness, Ann Block. Thomas Appel appeared on the employer's behalf and presented testimony from three other witnesses, Trese Davis, Ashley Gordon, and Michael Johnson. 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.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

After a prior period of employment with the employer through a temporary employment firm, the claimant started working directly for the employer on December 27, 2011. She worked full time as an assembler in the employer's control panel and wire harness manufacturing facility. Her last day of work was October 16, 2012. The employer discharged her on that date. The stated reason for the discharge was making threatening remarks in violation of the employer's harassment policy.

On October 15, 2012, the claimant had been given disciplinary action for texting on the job and for not meeting performance expectation. These actions had been taken as a result of reports made by Gordon, the assistant team lead in the claimant's department. On October 16 the claimant passed by Gordon within about twelve inches and told her, "You better watch yourself."

The claimant had previously told Gordon of situations where she had beat up other people. Gordon reported the comments as she felt threatened.

The claimant had previously been spoken to and warned regarding the employer's harassment policy; she had been advised that should there be incidents in the future which infringed upon the policy, she could be discharged. As a result of the employer's conclusion that her statement to Gordon on October 16 violated that policy, the employer discharged the claimant.

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); Iowa Code § 96.5-2-a.

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. 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. 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 claimant's albeit subtle threat toward Gordon shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's November 15, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 16, 2012. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs