

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER A AVALOS
Claimant

APPEAL NO. 13A-UI-00248-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURKE MARKETING CORPORATION
Employer

**OC: 12/09/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Heather Avalos (claimant) appealed a representative's January 4, 2013 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Burke Marketing Corporation (employer) for insubordination in connection with her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 8, 2013. The claimant was represented by Kevin O'Hare, Attorney at Law, and participated personally. The employer participated by Kimberly Houston, Human Resources Assistant, and Brad Beuter, Production Supervisor. The employer offered and Exhibit One 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 September 18, 2006, as a full-time pallet jack operator. The claimant signed for receipt of the employer's handbook on September 18, 2006. The claimant understood that if she had a problem with her supervisor she could go up her chain of command to human resources to seek a remedy. On January 24, 2007, the employer issued the claimant a written warning for chewing gum at work.

The claimant's main job was to work in the palletizing room. Sometimes she was asked to clean up messes that previous shifts left. When the palletizing room work was slow, she and her co-worker were asked to unload trailers of boxes and put them on elevators. Another line supervisor complained about the claimant doing work outside the palletizing room and not getting her regular work done.

On November 29, 2012, the claimant arrived at work to find a mess left from the previous shift and the palletizing room needing items to be moved every two to three minutes. The production supervisor pulled the claimant away from the palletizing room to move boxes. The claimant tried to explain that she could not work on the boxes. The production supervisor told the

claimant to meet in his supervisor's office. The claimant attempted to explain herself but both supervisor's told the claimant they did not want to hear it. The claimant was crying and said she wanted to speak with human resources. The two denied the claimant's request and told her to return to work and follow their orders. The claimant repeated her request to speak to human resources. The production supervisor told the claimant she could either do what he told her to do or go home. The human resources person appeared and suspended the claimant. On December 10, 2012, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

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

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). The question of whether the refusal to perform a specific task constitutes misconduct 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. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa App. 1985). In this case the claimant refused to perform the task because she thought her supervisors were not hearing her complaints. In the hearing the claimant's supervisor confirmed he was not listening to the claimant by stating he was unaware that the claimant's line

supervisor had complained that she was not completing her work in the palletizing room. The claimant had a logical reason for not following the supervisor's instructions and she wanted to be heard by a member of human resources as allowed in the handbook. The employer's request seemed reasonable to the employer but it did not know the claimant had received complaints for following the supervisor's instructions. The employer terminated the claimant for not doing her job and requesting to speak to human resources as allowed for in the employer's handbook. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 4, 2013 decision (reference 01) is reversed. 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/tll