

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIAYA PHIPPS
Claimant

APPEAL NO. 06A-UI-10978-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS MANUFACTURING LP
Employer

**OC: 10-08-06 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed from the November 1, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 30, 2006. The claimant participated in the hearing. Linda Zirnhelt, Human Resource Manager; Beth Lovell, Backup Lift Supervisor/Lift Driver; and Steve Spurgeon, Shipping Supervisor, participated in the hearing on behalf of the employer. Employer's Exhibit One and Department's Exhibit D-1 were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant's appeal is timely and whether she was discharged for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on November 1, 2006. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 11, 2006. That date fell on a Saturday so the appeal was due November 13, 2006. The appeal was not filed until November 14, 2006, which is after the date noticed on the disqualification decision. The claimant testified she attempted to fax the appeal November 13, 2006, but received a busy signal and did not know she should wait and try to fax the appeal again. She subsequently went to her local Workforce office November 14, 2006, and filed her appeal. While the claimant should have waited and tried to fax the appeal again or left it with the local Workforce office and the administrative law judge is not completely persuaded by the claimant's testimony regarding the situation, because she testified that the fax machine was busy, the administrative law judge must conclude the appeal was timely.

The claimant was employed as a full-time lift operator for Wells Manufacturing LP from May 12, 2005 to October 9, 2006. On October 5, 2006, the claimant was at the clerk's desk talking for a long period of time. Backup Lift Supervisor/Lift Driver Beth Lovell told the claimant to get back

to work and the claimant said she was sorting papers and did not move. After another period of time passed and Ms. Lovell determined the claimant had plenty of time to sort her paperwork, she again told her to return to work. The claimant said, "I'm just going to ignore you or it might get ugly." Shipping Supervisor Steve Spurgeon overheard the conversation and the claimant's raised voice and told the claimant to get back to work or go home. The claimant replied she would go back to work when she was ready and Mr. Spurgeon told her to do it now or go home. The claimant left the clerk's area on her lift but Mr. Spurgeon had to tell her twice to fasten her safety tether. The employer believed the claimant was returning to her job but after dropping her load she went to the other end of the building, parked her lift and left the premises without notifying the employer that she was leaving. On October 6, 2006, the operations manager informed Human Resource Manager Linda Zirnhelt about the situation. Ms. Zirnhelt took statements from Ms. Lovell and Mr. Spurgeon and then met with the claimant and terminated her employment October 9, 2006, for insubordination and leaving the premises without permission. The claimant was warned June 8, 2006, about unacceptable behavior after reports from other employees that she was kissing her co-worker boyfriend and October 11, 2006, for failing to meet the employer's expectation goals for number of cases put away.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no 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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant's behavior October 5, 2006, was unprofessional, inappropriate and insubordinate, and the employer's decision to terminate is understandable, this was an isolated incident of misconduct and as such does not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The November 1, 2006, reference 01, decision is reversed. The claimant's appeal is timely. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css