

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA JOHNSON
Claimant

APPEAL NO. 110-UI-04515-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEANCOR, LLC
Employer

OC: 08/29/10
Claimant: Respondent (1-R)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a fact-finding decision dated September 27, 2010, reference 01, which held that claimant is eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 17, 2010. Claimant did not participate. Employer participated. Claimant did not receive the decision until February 2011, which was the reason for her untimely appeal to the Employment Appeal Board. The Board ruled that she had good cause for the late appeal and allowed it to proceed. Claimant further alleged that she had not received notice of the hearing, which is the reason she did not participate in the hearing. The Board remanded the case to the agency on April 6, 2011. Due notice was mailed to the parties on April 21, 2011, and a new hearing was held involving both parties on May 11, 2011. At the second hearing, a new H.R. and Safety Specialist participated for the employer, Mr. Rick Talcott. Ms. Johnson did participate personally.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds as follows. Claimant began working for the employer on February 22, 2010. Claimant was discharged on September 2, 2010 by employer because of poor work performance. At the time of her termination, claimant was a full-time "line picker."

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct. H.R. and Safety Specialist J.T. Breslin documented her termination. (See Emp. Ex. 1). In it he stated, "Based on Brenda's performance the decision was made to terminate employment." Other serious allegations were raised suggesting Ms. Johnson threatened to sabotage product, but it is clear from Mr. Breslin's report that the main factor resulting in her termination was work performance. Furthermore, the employer presented no firsthand evidence at hearing that supports such a finding. Poor work performance is not misconduct under Iowa law.

DECISION:

The fact-finding decision dated September 27, 2010, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements. This matter is remanded to the Unemployment Insurance Division to ensure that benefits have re-commenced.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/kjw