

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAULA J BORLAND**  
Claimant

**APPEAL NO: 10A-UI-08022-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRECISION INC**  
Employer

**OC: 05/02/10  
Claimant: Respondent (5)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's May 24, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's discharge from employment was for nondisqualifying reasons. The claimant participated in the hearing with her attorney, Zane Blessum. Tom Borland, Ben Casey, Lena Larson, Jeff Knapp and Lori Sleep appeared on the claimant's behalf. James Gilliam, Attorney at Law, represented the employer. Greg Stravers and Todd Wieser testified on the employer's behalf. During the hearing Claimant Exhibits A through D and Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in July 1989. She became the production manager at the employer's C2 plant in 2000. In 2006, the employer opened the C3 plant and made the claimant the production manager at both locations. Wieser supervised the claimant.

When the claimant became a production manager, a pop can fund account had already been established. (Claimant Exhibit C.) The pop can fund account was established to deposit money from pop cans that employees drank at work. The production manager had discretion when this money could be used for the employees. The claimant used the money to pay for special employee lunches, holiday meals, thank you meals, t-shirts or over-the-counter supplies used at the plant. The claimant used the pop can fund account for her employees.

When the claimant became a production manager, she was encouraged to work with the community and help local farmers and businesses. When a local community member, business or employee wanted scrap metal, the claimant understood some scrap metal could be sold even though the employer had a contract with a scrap metal company who picked up scrap metal.

During the claimant's employment, when an employee, community person or local business paid for scrap metal, she deposited the money into the pop can fund account. The claimant understood she could deposit these proceeds into the pop can fund account. After the claimant's employment ended, the employer directed all moneys received from scrap metal be deposited in the corporate office account. (Claimant Exhibit B.)

The production completed at the C2 and C3 was billed by the corporate office and the money paid by customers went to the corporate office. Special orders made for local customers were built primarily from the scrap metal. The customer was charged for the scrap metal and the amount the local customer was charged was deposited into the pop fund account to be used for employees. The claimant relied a great deal on R.L. and her assistants to know how much to bill for a custom-made product for a local business or community member.

The claimant signed all purchase orders. When she signed purchase orders, if the amount was below \$1,500.00 or \$2,000.00 she did not need the corporate office's authorization. When the claimant signed purchase orders, she signed stacks at a time. She trusted R.L. and her managers who placed orders that equipment or supplies were needed at C2 and C3 for production. The claimant did not question any purchase orders she signed. The claimant did not know R.L. ordered personal equipment that he did not reimburse the employer.

The claimant spent a majority of her time at work and worked to the best of her ability. The claimant deposited money into the pop can fund account as she understood she was allowed to do and used the money from the account only for employees. The claimant did not use any of the money in the pop can fund account for her personal use.

The claimant's job was not in jeopardy until the employer's president received an anonymous letter in late December 2009. The letter complained about the special treatment a couple, R.L. and his wife, received. The anonymous writer asserted the employer paid for personal tools for these employees. (Employer Exhibit One.) The employer's president asked Stravers to investigate. The employer started looking for invoices for the equipment mentioned the letter. The employer did not find anything until the employer received an anonymous call in January 2010. The anonymous caller advised the employer to look at Northern Tool invoices. The employer then discovered custom built equipment for local businesses and community members but there was no corresponding paperwork or record of this work being done. Money paid for custom built products was not forwarded to the employer's corporate office. The employer assumed the money was deposited in the pop can fund account. While the employer was unable to immediately access the pop can fund account, the employer was told that checks issued to the employer had been deposited into the pop can fund account.

In mid-February 2010, the employer reviewed bank records, invoices and cancelled checks back to 2006. (Employer Exhibit Two.) The employer concluded the claimant rubber stamped her employees' purchase orders and deposited money into the pop can fund account that should have been deposited into the corporate account.

The first time the employer talked to the claimant about any problem was March 31, 2010. The claimant explained that she handled the pop can fund account the same way she had been trained by a former manager and that she had not established the pop can fund account. (Claimant Exhibit A and C.) By the time the employer talked to the claimant on March 31, management no longer trusted the claimant. As a result of in the employer's loss of trust, the employer informed the claimant that day she could either resign or she would be discharged for misappropriating the employer's funds. The claimant chose to resign (Employer Exhibit Three) so she would not be labeled as a thief.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(1) & (2)a. Even though the claimant signed a form indicating she resigned, if she had not resigned the employer would have discharged her. Under these facts, the claimant did not voluntarily quit her employment. Instead, the employer initiated the employment separation and discharged her.

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(8).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant – the employer no longer trusted the claimant. The evidence does not, however, establish that the claimant committed work-connected misconduct or even a current act of work-connected misconduct.

By mid or late February 2010, the employer knew the claimant deposited money from scrap metal sales sold to employees and local customers into the pop can fund account. The employer also knew the claimant signed off on personal equipment purchases for R.L. that he did not pay for. The employer, however, did not say anything to the claimant until March 31 when they told her she could either resign or be discharged. The employer's failure to advise the claimant she was being investigated or that her job was in jeopardy for a month or more before she was discharged does not establish that the claimant committed a current act of work-connected misconduct.

The claimant may have used poor judgment when she trusted her management personnel who took advantage of her. Given the nature of the claimant's job, she performed her work to the best of her ability. Since she had been depositing checks for scrap metal into the pop can fund account since 2006, the corporate office accounting methods were somewhat lax and should have discovered problems before early 2010.

The facts do not establish the claimant intentionally failed to deposit money to the corporate account. Instead, she deposited money into the pop can fund account that she honestly believed she could do. None of the money used in the pop can fund account was used for the claimant's personal use. Instead, all funds were spent on employees for food, parties, clothing and medical supplies. The claimant did not commit work-connected misconduct. Therefore, as of May 2, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's May 24, 2010 determination (reference 01) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit her employment. Instead, the employer discharged her for reasons that do not constitute work-connected misconduct or even a current act of work-connected misconduct. As of May 2, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css