

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**PATRICIA G HAYNES  
105 S CHESTNUT ST  
NEW LONDON IA 52645-1604**

**ALANIZ LLC  
425 N IRIS ST  
PO BOX 799  
MOUNT PLEASANT IA 52641-0799**

**Appeal Number: 06A-UI-05034-RT  
OC: 03/26/06 R: 04  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Patricia G. Haynes, filed a timely appeal from an unemployment insurance decision dated April 13, 2006, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on May 25, 2006, with the claimant participating. Kristy Ensminger, Human Resources Director, and Rodney Stewart, Production Manager, participated in the hearing for the employer, Alaniz LLC. Employer's Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full-time laser machine operator from August 19, 2002, until she was discharged on March 24, 2006. The claimant was discharged for errors in her work and in particular, receiving four (actually six) warnings from the employer. The claimant operates a laser machine which places or prints names and addresses on paper. On March 23, 2006, she entered into the machine 22 wrong groups and therefore the wrong names and addresses were printed on the paper. The claimant did catch the error but not until some papers had been misprinted. The claimant did then run the correct addresses and names. On that occasion the groups were already in the computer and were correct but the claimant did not get the right names run on the machine. She was stacking in the wrong way.

The claimant received numerous warnings for the same or similar behavior as shown at Employer's Exhibit One. On March 21, 2006, the claimant received a written warning for running the wrong names on the same machine. The claimant conceded that she did run the wrong names on the machine. The claimant did not follow proper procedure. On February 23, 2006, the claimant received another warning for again running the wrong groups in the same machine and causing the wrong names to be printed. The claimant did not follow procedures on that occasion. On January 24, 2006, the claimant received a written warning for running the same group of names and addresses two times and therefore duplicating efforts causing the employer to become short on its paper stock. On October 10, 2005, the claimant received a written warning for not meeting the employer's standards of running 28,000 sheets of paper, called "clicks." On August 4, 2005, the claimant received a written warning for running the wrong groups and then causing duplication.

The claimant had been operating the laser machine for at least 3½ years. In 2003 she only had two errors. In 2004 she had no errors. In 2005 the claimant only had two errors. In 2006 in only three months, the claimant had four errors. The claimant testified that perhaps the machine was not working properly, but the employer's witnesses credibly testified that there was no evidence that the machines were not operating correctly. The errors were the claimant's.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on March 24, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. At the outset, it must be noted that none of the witnesses was particularly credible and could not really explain the processes, including the claimant. The claimant was discharged for errors made in operating a laser machine or not following proper procedures and for accumulating six warnings for such failures. At the outset, the administrative law judge is constrained to conclude that the employer has not demonstrated by a preponderance of the evidence that any of the claimant's failures were willful or deliberate and therefore, the administrative law judge concludes that there is not a preponderance of the evidence that the claimant's acts were deliberate acts or omissions constituting a material breach of her duties and obligations arising out of her worker's contract of employment or that they evince a willful or wanton disregard of the employer's interests. Therefore, the administrative law judge concludes that the claimant's acts are not disqualifying misconduct for these reasons.

The administrative law judge is constrained to conclude that the claimant's acts are carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. The evidence does establish that on March 23, 2006, the claimant began running the machine and putting the wrong groups in the machine causing the wrong names and addresses to be printed on the paper. Eventually the claimant conceded that this was because she was stacking in the wrong way. It is true that the claimant did catch the error and went back and ran the items again correctly. However, the claimant did run papers with the wrong names and addresses on them and this was as a result of her negligence or carelessness. The evidence also establishes that the claimant had four other warnings within a year for negligent

operation of the machine as set out in the Findings of Fact. The fifth warning was because the claimant worked below the standard of 28,000 sheets of paper or "clicks." The administrative law judge is not convinced that this was negligence but must conclude that the other four warnings were for negligence. For some of the warnings the claimant conceded that she had operated the machine incorrectly or failed to follow appropriate procedures. The administrative law judge is constrained to conclude that the claimant's acts were carelessness or negligence in such a degree of recurrence so as to establish disqualifying misconduct. The administrative law judge is a bit concerned that the evidence establishes that the claimant was able to operate the machine with few errors, including only two errors in 2003, no errors in 2004, and only one real error in 2005 but then accumulated four errors in the three months of 2006. None of the parties could offer any explanation. The administrative law judge is constrained to conclude that the claimant simply became careless and negligent in her work. The evidence does not support the proposition that the claimant just demonstrated unsatisfactory conduct or failure in good performance as a result of inability or incapacity because the evidence is clear that the claimant could do the work appropriately. Unemployment insurance benefits are denied to the claimant until, or unless, she requalifies for such benefits.

**DECISION:**

The representative's decision of April 13, 2006, reference 01, is affirmed. The claimant, Patricia G. Haynes, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she was discharged for disqualifying misconduct.

cs/pjs