

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTINE D BUNKER
Claimant

APPEAL NO: 07A-UI-07764-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOLDED PRODUCTS INC
Employer

OC: 07/15/07 R: 01
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kristine D. Bunker (claimant) appealed a representative's August 9, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Molded Products, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 28, 2007. The claimant and her witness, Cathy Lau, participated in the hearing. Crystal Smith, the human resource director, appeared on the employer's behalf. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 3, 2005. The claimant worked as a full-time machine operator on second shift. The claimant and Cathy Lau were the only production workers on second shift.

The employer suspected parts were being taken from first-shift production and put in with second shift's work production. The employer decided to weigh the parts first-shift employees produced, put the parts in bags and then tie the bags a certain way. At the beginning of first shift on July 17, the bag that contained first-shift employees' parts weighed less than it had at the end of first-shift on July 16. The employer also concluded the bag had been re-tied.

Before the claimant went to work on July 17, the vice-president, David Tyrrel, J. R. Messinger and Crystal Smith talked to both the claimant and Lau. The employer confronted the two employees about the weight discrepancies in the bag of parts first-shift employee had produced on July 16. The claimant did not have any idea what the employer was talking about and denied taking any of the parts first-shift employees had produced. The employer told both

employees that as a result of the employer's investigation the employer would no longer allow them to work second shift unsupervised. The claimant and Lau would, however, be allowed to work first shift where they would be supervised.

After the employer informed the claimant and Lau they would no longer work second shift, Lau and the claimant became upset about the employer's accusations. In frustration and while they were upset, the claimant and Lau asserted the employer was setting them up to discharge them. A verbal confrontation occurred between Tyrrel, Smith, the claimant and Lau. The claimant and Lau informed the employer that they were not the only employees who had keys or access to the area where the first-shift employees kept their parts as the employer believed. After the claimant asked when the employer wanted her to work first shift, the employer then informed them that one of them would have to work with Donna. Neither the claimant nor Lau wanted to work with Donna and said they would not work with her. After Lau shook her head, the employer told her she no longer worked for the employer and asked her to resign. When the employer told Lau that the employer was trying to work with her, she said, "Bullshit. The employer responded by telling Lau it now was impossible for the employer to maintain her employment.

After Lau had been discharged, the claimant asked if she still had a job. When asked, the claimant confirmed that she did not believe the employer treated her fairly. The claimant and employer started another verbal confrontation about the work the employer expected the claimant to do. Unfortunately, Lau added fuel to the heated argument. The claimant finally became so upset and frustrated that she made the comment, "In other words, I'm your B.... or N_____? Tyrrel then informed the claimant that the employer was no longer going to continue her employment and discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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).

Initially, when the employer talked to the claimant and Lau on July 17, the employer planned to continue the claimant's employment by transferring her to work on first shift. Based on the employer's discovery that a bag of parts first shift had produced was lighter after second shift ended and the bag had been re-tied, the employer concluded that the claimant and Lau took out

first shift parts and put them with their parts to make it look like they worked more than they did during second shift. The employer incorrectly assumed the claimant and Lau were the only employees who had access to the first-shift produced parts. Both Lau and the claimant took offense at being accused of doing this. They argued their position, which resulted in a long, hot-headed incident. The claimant, Lau and the employer became frustrated and angry.

Instead, of calling a time out to calm down, the parties continued arguing with one another. Each party confronted the other about other issues. All parties became frustrated and angrier at the other as they continued to make accusations about the other party. All parties contributed to the heated argument and neither the claimant nor the employer acted professionally. The claimant felt the employer treated her as a slave and told the employer she felt this way. The employer took offense at this conclusion. As the result of frustration, anger and a total lack of composure by both parties, the employer finally discharged the claimant.

The employer had business reasons for discharging the claimant. A single hot headed incident does not establish that the claimant intentionally disregarded the standard of behavior the employer had a right to expect from her. For unemployment insurance purposes, the claimant did not commit work-connected misconduct. As of July 15, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 9, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of July 15, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs