

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDI D KARDUX
Claimant

APPEAL NO: 06A-UI-08446-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MUSCO SPORTS LIGHTING LLC
Employer

**OC: 07/23/06 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 14, 2006, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 18, 2006. Claimant participated personally and was represented by Steven Kundel, Attorney at Law. Employer participated by Cassie Barber, Human Resource Manager and Julie Fisher, Corporate Counsel.

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 considered all of the evidence in the record, finds: Claimant last worked for employer on July 7, 2006.

Claimant was discharged on July 13, 2006 by employer because claimant argued with a coworker during work. Claimant used profanity when arguing with the coworker. The confrontation was caused by the coworker. It started the day prior when the coworker threw product at claimant. Claimant complained to management to no avail. The next day the coworker started openly calling claimant a "fucking snitch." Claimant then engaged in a verbal confrontation with the coworker after being approached. It was the coworker that initiated the final verbal confrontation. Claimant had a prior warning on the same issue. Claimant was on notice that further incidents would result in discharge.

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.

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).

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.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning verbal confrontations at work. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant did not start the verbal fight. Claimant's sworn testimony is more credible than the hearsay offered by employer. Claimant had been taunted for two days by the coworker. Claimant tried to resolve the issue by going to management to no avail. Claimant was then confronted by the coworker and called a snitch which resulted in the final argument. Claimant tried to halt the harassment by complaining to management. Instead the complaint resulted in greater harassment. The final incident was not the fault of claimant. This is not an intentional act which qualifies as misconduct. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated August 14, 2006, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/cs