

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNE M WINTER
Claimant

APPEAL NO: 06A-UI-08543-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUSTOM-PAK INC
Employer

**OC: 07/30/06 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Custom-Pak, Inc. (employer) appealed a representative's August 23, 2006 decision (reference 01) that concluded Anne M. Winter (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 11, 2006. The claimant participated in the hearing with her representative, John Graupmann. Andrea Lawrence, the human resource coordinator, Dan Thiede, a group facilitator and Roger Streed, the safety director, appeared on the employer's behalf. 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 August 21, 1989. The claimant worked as a full-time machine operator. A week before her employment separation, the claimant attended a refresher course on the employer's lock-out, tag-out procedure. The employer requires employees to use the lock-out, tag-out procedure any time a body part is in a hazardous zone of a machine. Prior to August 2, 2006, the claimant had not received any warnings about violating the employer's safety procedure.

On August 2, the claimant was producing funnels on the machine she operated. When a part became stuck on an air wand, the claimant thought she could knock off the part as she has done before by going underneath the machine to knock the part off the air wand. Since the air wand is not in a hazardous zone, the claimant did not use the lock-out, tag-out procedure. The claimant did not stop the machine because she planned to be underneath the guard area at all times.

The claimant was underneath the guard area and pushed on the part to release it from the air wand. When the claimant pushed on the part, her head involuntarily jerked up. As the

claimant's head jerked up, the mold opened and hit the claimant on the bridge of her nose. The claimant received two cuts on the bridge of her nose. The machine also forced the claimant's head against the cover guard, which bruised the back of the claimant's neck.

Based on the employer's investigation, the employer concluded the claimant violated the employer's safety procedure when she did not stop the machine as she tried to get a part off the air wand. The employer's policy informs employees that any safety violation will result in an employee's discharge. The employer discharged the claimant on August 2, 2006.

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 § 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).

The employer established compelling business reasons for discharging the claimant. Initially, the claimant was not in a hazardous zone. The claimant did not think she had placed herself in a position where she would be injured as she attempted to get a part off an air wand. Since the claimant and other employees have done the same thing in the past without any being disciplined, the claimant did not intentionally violate the employer's policy. When the claimant inadvertently jerked her head up, everything happened so quickly she did not have time to stop the machine. Even though the claimant was injured, she did not intentionally violate the employer's safety procedures on August 2. The claimant may have used poor judgment, but she did not commit work-connected misconduct. As of July 30, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 23, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of July 30, 2006, 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/cs