

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNY PENNELL

Claimant

APPEAL NO: 07A-UI-01725-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIEOMATIC INCORPORATED

Employer

**OC: 01-21-07 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 12, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 25, 2007. The claimant participated in the hearing with Attorney Mike Bandy. Collette Wiebbecke, Human Resources Manager; Dave Forbes, Quality and Sales Manager; and Randy Hansen, Production Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Dieomatic Incorporated from July 18, 1994 to January 22, 2007. On January 19, 2007, the claimant was asking questions of another employee about co-worker Nick Harrison's personal life. Mr. Harrison became upset and went to supervisor Gene Brown and stated he wanted the questioning and comments to stop and as a result Mr. Brown held a meeting with the claimant and Mr. Harrison and laid some ground rules of what would and would not be acceptable behavior during the meeting. The claimant and Mr. Harrison had a confrontation during the meeting and the claimant was loud and yelling and "got in (Mr. Harrison's) face," pointed her finger and called him a "fucking punk." Mr. Brown stopped the meeting and the claimant was told to return to the floor and continue working. Mr. Harrison made a harassment complaint against the claimant and consequently the employer conducted a further investigation of the incident. The claimant was then told to meet with Dave Forbes, Quality and Sales Manager, after Mr. Brown told him what happened in his office and Mr. Harrison had talked to Mr. Forbes as well. Mr. Forbes told the claimant that Mr. Harrison was upset that she had called him a punk and that he wanted an apology. Despite being asked to do so three times the claimant refused to apologize until Mr. Forbes said he was sending her home at which time she said she would apologize but Mr. Forbes explained she had three opportunities to do so and refused and now it was too late. The employer terminated the claimant's employment January 22, 2007. The claimant received a written documentation

August 21, 2002, for glaring at and giving dirty looks to co-workers; a verbal warning April 1, 2003, for substandard work; a written counseling August 17, 2004, for wasting time; a documentation May 10, 2005, for failure to keep personal issues out of work; a documentation June 8, 2005, for walking off the job for six minutes without permission; a written warning and one-day suspension for violation of a safety rule causing a production slowdown and leaving the plant without permission; and on January 26, 2006, she received a second written warning and three-day suspension for being loud, angry and disruptive, language, name calling and abusive use of company property.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

The claimant had been warned and suspended because of her attitude and being "loud, angry and disruptive" but regardless of the repeated warnings and suspensions her behavior persisted. While the claimant felt wrongly accused by Mr. Harrison and was upset about the situation that does not justify her calling him a "fucking punk" in the meeting in the supervisor's office or her refusal to offer the requested apology despite Mr. Forbes' three requests. The claimant had ample opportunity to consider her actions and make rational and professional choices but failed to restrain herself or offer an apology when the employer gave her the chance

to do so. The administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The February 12, 2007, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs