

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**YVONNE W BENEDICT**  
Claimant

**APPEAL NO: 09A-UI-01123-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MINNESOTA MINING & MFRG CO**  
Employer

**OC: 12/21/08 R: 02**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Minnesota Mining & Manufacturing Company (employer) appealed a representative's January 14, 2009 decision (reference 01) that concluded Yvonne W. Benedict (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 11, 2009. The claimant participated in the hearing. Kevin Mosley appeared on the employer's behalf and presented testimony from one other witness, Brian Boyle. One other witness, Marty Furst, was available on behalf of the employer but did not testify. 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:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 17, 1999. She worked full time as a warehouse operator on the third shift (start time 11:00 p.m.) at the employer's Forest City, Iowa distribution center. Her last day of work was December 17, 2008. She was suspended on December 18 and informed she was discharged on December 22, 2008. The reason asserted for the discharge was commission of a safety violation.

In February 2008 the employer adopted a new guideline which provided in part that tampering, changing, or by-passing of a dead man's switch was a violation that could lead to discharge. The claimant was absent when the employer covered these guidelines with the claimant's crew. The employer has failed to establish that the claimant was ever provided or specifically shown the new guidelines.

The claimant typically operated a stand-up forklift. The forklift was operated both by hand controls, including a throttle, but also had a foot-controlled dead man's switch. The operator had to have his or her foot and weight correctly placed on the dead man's switch in order for the

forklift to operate. If the operator's foot and weight came off the switch, the machine would shut off.

The platform on which the switch was positioned and on which the claimant stood was prone to significant vibrations which bothered the claimant's knees. Seeking to reduce these vibrations, on December 8 the claimant took a folded piece of cardboard, approximately two foot by four foot, and laid it on top of the platform. She then stood on the cardboard on the platform, still positioning her foot and placing her weight down on the cardboard immediately above the dead man's switch. It still operated such that if she shifted her foot and weight from directly above the switch, the machine would shut off.

Another employee observed the claimant's make-shift cushion and reported this to Mr. Boyle, the warehouse supervisor. He approached the claimant and had her remove the cardboard from the platform, which she did. As a result of this incident, the claimant was discharged. There had not been any prior issues or discipline regarding the claimant.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her use of the cardboard on the platform above the dead man's switch. First, the employer has not established that the claimant was on notice that tampering, changing, or bypassing a dead man's switch could be grounds for termination. Further, the claimant reasonably believed and the employer has not refuted that the dead man's switch did continue to operate as it should. There had been no prior issues or discipline regarding the claimant. Under the circumstances of this case, the

claimant's attempt at an ad hoc cushion on the platform was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's January 14, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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