

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY L WARD
Claimant

APPEAL NO. 11A-UI-06162-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALTECH ENTERPRISES INC
Employer

**OC: 04/03/11
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Tracy Ward, filed an appeal from a decision dated April 27, 2011, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on June 8, 2011. The claimant participated on his own behalf. The employer, Paltech Enterprises, Inc. (Paltech), participated by President John Swenby, General Manager Dan Holub, and Foreperson Cathy Schoeberl.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Tracy Ward was employed by Paltech from October 15, 2010 until April 6, 2011 as a full-time delivery driver. In the past, when he delivered to a particular customer, the general manager, Dave Stoll, had told him there was often no one in the office for him to check with, so he should just go into the plant and find someone to help unload the truck.

On April 6, 2011, Mr. Stoll called Paltech General Manager Dan Holub to complain about Mr. Ward. The claimant had been in the plant looking for a forklift driver to help unload when Mr. Stoll confronted him about why he was in that area. It was an area where he had been in the past without causing any complaint. Mr. Ward stated he apologized and left to wait by his truck for a forklift driver but Mr. Stoll complained he had “been less than polite” when he left.

Mr. Holub contacted President John Swenby, who attempted to call Mr. Ward on his cell phone, but the claimant did not answer. When the claimant returned to the Paltech office, he and Mr. Holub contacted Mr. Swenby, who told him he was fired.

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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case, the employer did not present any eyewitness testimony from Mr. Stoll regarding the complaint against Mr. Ward. The claimant has asserted he had been given authorization by Mr. Stoll to look for someone in the plant to help unload the truck and on April 6, 2011, was not in a location where he had not been in the past. He stated he apologized when confronted by Mr. Stoll on that occasion. If there was anything more to the incident, the employer did not provide any firm evidence of it.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of April 27, 2011, reference 01, is reversed. Tracy Ward is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw