

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOLITA A ROSS

Claimant

APPEAL NO. 07A-UI-06516-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

**OC: 06/03/07 R: 03
Claimant: Appellant (1)**

Section 96.5-2- a- Discharge

STATEMENT OF THE CASE:

Lolita A. Ross (claimant) appealed a representative's June 21, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 18, 2007. The claimant participated in the hearing. Randy Schultz, the plant human resource manager, 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 clamant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 26, 2006. The claimant worked as a full-time production employee. The employer's policy informs employees they will be discharged if they fight at work.

During orientation, a younger employee called the claimant a B----. The claimant told the younger employee she could not say this to the claimant. The claimant did not have any further problems with this employee until May 22, 2007.

On May 22, 2007, the claimant and another employee were working together. When the other employee indicated she needed a bathroom break, she told the claimant she would ask the younger employee to help the claimant so the claimant would not get behind. When the younger employee was asked to work with the claimant, she said she would not work with that B----. The younger employee also said she could not stand that B---- (claimant). The claimant went to the younger employee and told her not to call the claimant that name. The younger employee then swung at the claimant and the claimant started fighting with her. The claimant tried to hold down the younger employee. When the supervisor came in an attempt to break up

the fight, both the claimant and younger employee were throwing punches. The claimant accidentally hit the supervisor.

The employer suspended the claimant on May 22, 2007. On May 24, 2007, the employer discharged the claimant for fighting at work, a violation of the employer's policy. The employer's investigation revealed conflicting reports as to who started the fight.

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. 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 claimant knew the employer did not allow employees to fight at work. While the claimant may not have thrown the first punch, she confronted the younger employee when that employee called her a B----. This was unnecessary when the claimant could have reported the younger employee's comment to a supervisor when the claimant saw a supervisor. When the supervisor came to break up the fight between the two women, the claimant was still throwing punches and inadvertently hit the supervisor. Upon considering the evidence that is most favorable to the claimant, the facts reveal the claimant's actions on May 22 amount to an intentional and substantial disregard of the standard of behavior the employer had a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of June 3, 2007, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's June 21, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 3, 2007. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw