

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANCISCA RIVERA

Claimant

APPEAL NO: 10A-UI-02743-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY / JBS

Employer

OC: 01/24/10

Claimant: Appellant (2/R)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Francisca Rivera (claimant) appealed a representative's February 17, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Swift & Company / JBS (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 21, 2010. The claimant participated in the hearing. Javier Sanchez appeared on the employer's behalf. Ike Rocha served as interpreter. 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 there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 1, 2002. She worked full time as a first shift production worker in the loin boning area of the employer's Marshalltown, Iowa pork processing facility. Her last day of work prior to February 25, 2010 was January 14, 2010.

On January 14 the claimant was scheduled to work from 5:30 a.m. to 2:30 p.m. At about 8:30 a.m. the claimant complained to her supervisor that she was not feeling well, that she had a headache and chest pains, and that she wished to go home. The supervisor refused to allow her to go home; this decision was supported by the manager above the supervisor. However, at a break at about 11:28 a.m., the claimant clocked out, went to the nurse's station and was given some medicine for her headache, and then left and did not return for work the rest of the day. When she sought to return to work on January 15 she was denied entry, as the employer claimed that she had voluntarily quit by leaving work without permission on January 14. She repeatedly attempted to return to work or communicate with the employer's human resources office, but was repeatedly told to wait until she was called.

As a result of a grievance filed on her behalf, the claimant was reinstated, and was returned to work on February 25. She worked two days that week, but resumed full-time work the following week, apparently working 41 hours during the week ending March 6, 2010 at an hourly rate of approximately \$12.00. Her continued claim for that week reflects wages earned of only \$214.00, which may have been a mistaken reentry of her wages earned for the week ending February 27, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that she voluntarily quit by leaving without permission. Where a person leaves but has specified a reason other than quitting prior to her leaving, the necessary intent to quit is not established. Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21), Peck, supra.

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but 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 decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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).

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 the employer effectively discharged the claimant was her leaving work before the end of her shift without permission. The claimant reasonably attempted to obtain permission to leave due to feeling ill. Based upon the evidence provided, the claimant's actions in leaving when her request was denied was not misconduct within the meaning of the statute. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Benefits are allowed, if the claimant is otherwise eligible.

An issue as to whether the claimant properly reported her wages earned for the week ending March 6, 2010, after her reinstatement, arose during the hearing. If she was fully employed for that week or earned \$403.00 or more during that week, she would not be eligible for any unemployment insurance benefits for that week. The matter is remanded to the Claims Section to verify and address this issue.

DECISION:

The representative's February 17, 2010 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did effectively discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the earned and reported wage issue for the week ending March 6.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs