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

SOHAIR ELTENGARI
Claimant

APPEAL NO. 08A-UI-06494-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 06/08/08   R: 01
Claimant: Respondent (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed an unemployment insurance decision dated July 7, 2008, reference 01, which held that Sohair Eltengari (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 30, 2008. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted and, therefore, did not participate. The employer participated through Mike LeFevre, Human Resources Manager. 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:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production worker from December 22, 2006 through June 9, 2008 when she was terminated per the employer's progressive disciplinary policy. Employees are discharged after receiving four written warnings in a rolling 12-month period. A counseling statement is typically issued to the employee before a written warning is issued. The claimant was counseled on February 23, 2007 for taking an unauthorized break and a written warning was issued for the same violation on October 23, 2007. A second written warning was issued to the claimant on January 18, 2008 for taking an unauthorized break. She was counseled on January 21, 2008 for poor job performance when she was causing the line to back up. The claimant was counseled on February 11, 2008 for product safety sanitation when she was chewing gum on the production floor.

Her February 23, 2007 counseling rolled off on February 23, 2008 which effectively reduced the October 23, 2007 written warning to a counseling. She received two more written warnings for product safety sanitation on April 9, 2008 and May 21, 2008. In both instances she was chewing gum on the production floor which is strictly prohibited. The claimant received her final

written warning on June 5, 2008 for taking an unauthorized break. She gets a 30-minute break which she took at 9:30 a.m. on June 5, 2008 but she did not return to work until 10:15 a.m. This was the fourth written warning within 12 months and the claimant was discharged as a result.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged per the employer's progressive disciplinary policy after receiving four written warnings within a 12-month period. The claimant's repeated refusal to follow policy shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 7, 2008, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. There is no overpayment as a result of this decision.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/css