

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONI I GENONE
Claimant

APPEAL NO. 07A-UI-08171-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

OC: 07/15/07 R: 03
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Beef Products, Inc. (BPI) filed an appeal from a representative's decision dated August 20, 2007, reference 03, which held that no disqualification would be imposed regarding Toni Genone's separation from employment. After due notice was issued, a hearing was held by telephone on September 11, 2007. Ms. Genone participated personally and was represented by Hattie Holmes, Paralegal. The employer participated by Rick Wood, Human Resources Manager; Charlene Schuman, Human Resources Coordinator; and Jennifer Stubbs, Corporate Human Resources.

ISSUE:

At issue in this matter is whether Ms. Genone was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Genone began working for BPI on July 10, 2007 and last performed services on the shift that began on July 16. She called on July 17 to report that she would be absent due to illness. She sought medical attention for the rash she was experiencing and provided a doctor's note to BPI on July 20. The note indicated Ms. Genone should avoid working in a wet environment but did not indicate for what period of time.

The employer's business consists of processing food. As such, sanitation requires constant cleaning of the work areas. The employer does not have any work environment that would not be wet. Given her brief tenure, Ms. Genone was not eligible to take a leave of absence. Neither party knew when the rash would resolve. Since she had experienced the rash in past employment, BPI felt there was the possibility of recurrence. Because there was no work available in a dry environment, Ms. Genone was released from the employment.

REASONING AND CONCLUSIONS OF LAW:

Ms. Genone's separation from employment was initiated by the employer. She had no desire or intent to sever the employment relationship. The administrative law judge concludes that the separation was a discharge. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Genone was discharged because the employer could not accommodate her doctor's recommendation that she avoid a wet work environment. Her separation was not due to any deliberate or intentional misconduct.

Even if the administrative law judge were to conclude that Ms. Genone quit, she would still be entitled to benefits. Her doctor advised her not to work in a wet environment. Given the nature of the employer's operation, the doctor's advice was tantamount to a recommendation that she not work at BPI. As such, her separation would be for good cause attributable to the employment within the meaning of Iowa Code section 96.5(1).

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Ms. Genone was separated from BPI for no disqualifying reason. Therefore, benefits are allowed.

DECISION:

The representative's decision dated August 20, 2007, reference 03, is hereby affirmed. Ms. Genone was separated from employment for no disqualifying reason. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css