

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA TAPIA
Claimant

APPEAL NO. 10A-UI-17330-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS
Employer

OC: 11/21/10
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, West Liberty Foods, filed an appeal from a decision dated December 15, 2010, reference 02. The decision allowed benefits to the claimant, Jessica Tapia. After due notice was issued, a hearing was held by telephone conference call on January 31, 2011. The claimant participated on her own behalf. The employer participated by Human Resources Generalist Nikki Bruno and Human Resources Manager Maria Bozaan.

ISSUE:

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

FINDINGS OF FACT:

Jessica Tapia was employed by West Liberty Foods from September 9, 2008 until November 22, 2010 as a full-time benefits recruiting associate. She had received a three-day suspension September 13 through 15, 2010, for insubordination. Her supervisor, Nikki Bruno, had specifically told her not to pass out certain materials to employees, but the claimant did so anyway. Human Resources Manager Maria Bozaan issued her the suspension and advised her at that time she would be subject to further discipline, up to and including discharge, for any future incidents.

On November 16, 2010, Ms. Tapia scheduled six applicants for job interviews the next day, and also scheduled two current employees for a benefits orientation. She left work early that day and did not notify the members of management who were to conduct the employment interviews that the appointments had been scheduled. The interviewees had a wait of upwards of two hours and the management members had to rearrange their schedules at the last minute to conduct the interviews. In addition, the supervisors of the current employees were not notified of the benefits orientation and neither were the members of the human resources department who were to do the orientation.

Ms. Tapia said she “forgot” about notifying all these people. Even if she left early, she should have notified her supervisor that all of her work was not done and the supervisor would have

seen to it the proper notices were issued to the various participants. The claimant was absent November 17, 18, and 19, 2010, and was discharged when she returned to work on Monday, November 22, 2010.

Jessica Tapia has received unemployment benefits since filing a claim with an effective date of November 21, 2010

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 claimant had been advised her job was in jeopardy as a result of her failure to follow instructions and perform her assigned work duties. When the claimant left early on November 16, 2010, she received permission from her supervisor to do so, but failed to inform the supervisor she had not completed all of her work duties at the time. A simple request to send out the notices on her behalf would have avoided many problems for many people the next day. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of December 15, 2010, reference 02, is reversed. Jessica Tapia is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw