

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZINETA CAVKUSIC
Claimant

APPEAL NO: 10A-UI-17758-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

OC: 11-28-10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 27, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 8 and continued on February 9, 2010. The claimant participated in the hearing with Interpreter Tanja Abramovic. Rick Wood, Human Resources Manager, participated in the hearing on behalf of the employer. Jennifer Stubbs, Human Resources Benefits Supervisor, was present at the February 8, 2011, hearing but was not available when the hearing was continued February 9, 2011. Employer's Exhibits One through Seven were admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general laborer for Iowa Beef Products from September 2, 2008 to December 2, 2010. She worked the 10:00 p.m. to 6:00 a.m. shift. On November 30, 2010, the claimant was observed by Brian Clemmons, the C Shift Superintendent, taking an unauthorized smoking break at 11:00 p.m. (Employer's Exhibit One). On May 28, 2009, she received a written warning for failing to double check stickers before removing them causing a sparse combo to be dumped into a chuck run causing 6,300 pounds of finished product to be downgraded (Employer's Exhibit Four). On September 24, 2009, she received a second written warning for dumping a sparse combo into a chuck run causing a downgrade of 3 pallets of finished product (Employer's Exhibit Four). On November 24, 2009, she received a warning and three-day suspension for failing to check a sticker on a combo (Employer's Exhibit Four). On November 28, 2009, she received a written warning for patterned attendance violations (Employer's Exhibit Three). On November 30, 2009, the claimant received a conduct counseling because she was found to be socializing on the line rather than sorting bone and other foreign objects from the product (Employer's Exhibit Four). On July 28, 2010, the claimant was suspended due to her attendance because the employer noticed her absences corresponded with full plant clean-up nights (Employer's Exhibit Three). The claimant was

absent during clean-up nights March 24, April 21, May 5, June 9 and November 2, 2010 (Employer's Exhibit Three). On October 27, 2010, the claimant received a final written warning and three-day suspension for patterned attendance issues after she was absent Friday, September 10 and Saturday, September 11, 2010, following approved time off and then again Monday, October 25 and Tuesday, October 26, 2010, following approved time off (Employer's Exhibit Two).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 received at least five written warnings and was suspended three times in the two plus years of her employment. Her infractions ranged from performance issues resulting in thousands of pounds of product having to be downgraded, to socializing on the line, to calling in sick on days the plant was scheduled to be cleaned, and finally patterned absences where she extended approved absences or days off by calling in the following two days so she would only receive one attendance point. The final incident occurred November 30, 2010, when she took an unauthorized break one hour after reporting for work. Her statement indicated she knew she "messed up," and that she was sorry and it would not happen again. The employer warned her on numerous occasions and provided an interpreter for her each time disciplinary action was

taken. The administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The December 27, 2010, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css