

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADRIANNE E TAYLOR
Claimant

APPEAL NO. 11A-UI-15815-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

**OC: 11/13/11
Claimant: Appellant (2)**

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Adrienne Taylor filed a timely appeal from the December 8, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 17, 2012. Ms. Taylor participated personally and was represented by Brian Ulin, business representative for United Food and Commercial Workers Local 230. Ms. Taylor and Mr. Ulin both testified. The employer submitted written waiver of its participation in the hearing.

ISSUE:

Whether the claimant was discharged or suspended for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Adrienne Taylor is employed by Cargill Meat Solutions Corporation as a full-time production worker. Ms. Taylor started with the employer in 2008. On November 11, 2011, Jessica Shepherd of Cargill Meat Solutions Corporation notified Ms. Taylor that she was being discharged from the employment for falsification of a doctor's note. Ms. Taylor had presented the employer with a doctor's note regarding three days she had missed. The note was supposed to authorize her absence for three whole days. When the doctor completed the note, the doctor indicated the note was for three *half* days. Ms. Taylor knew the reference to half days was an error. Instead of returning to the doctor to get another note, Ms. Taylor scribbled out the reference to half days. The employer conducted an investigation and confirmed with the doctor that the doctor had erred by writing the note for half days. The employer nonetheless deemed Ms. Taylor's alteration of the note as falsification and discharged her from the employment. The United Food and Commercial Workers local 230 grieved the discharge. The employer subsequently agreed to allow Ms. Taylor to return to the employment. Ms. Taylor returned to the employment on December 22, 2011 and continues in the employment at this time.

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.

Iowa Administrative Code rule 871 IAC 24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly

be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer waived participating in the hearing and did not present any evidence to support the allegation that Ms. Taylor had acted with intent to deceive the employer or with willful or wanton disregard of the employer's interests. The evidence indicates that Ms. Taylor made a good-faith error in judgment when she decided to correct the doctor's note by deleting the reference to half days. The conduct did not constitute misconduct in connection with the employment. Ms. Taylor was discharged for no disqualifying reason. Accordingly, Ms. Taylor is eligible for benefits for the time she was suspended, provided she is otherwise eligible. The relevant benefit weeks would be the week ending November 19, 2011 through the week ending December 24, 2011. The employer's account may be charged for benefits paid to Ms. Taylor.

DECISION:

The Agency representative's December 8, 2011, reference 01, decision is reversed. The claimant was discharged on November 11, 2011 for no disqualifying reason. The claimant was reinstated to the employment on December 22, 2011. The claimant is eligible for benefits for the week ending November 19, 2011, through the week ending December 24, 2011, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw