IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MELISSA A FARRELL
Claimant

HORMEL FOODS CORPORATION
Employer

APPEAL NO: 11A-UI-05676-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/27/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Hormel Foods Corporation (employer) appealed a representative's April 20, 2011 decision (reference 01) that concluded Melissa A. Farrell (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 23, 2011. The claimant participated in the hearing and was represented by Phillip Myers, attorney at law. Erin Montgomery appeared on the employer's behalf and presented testimony from two witnesses, Todd Yocum and Troy Hawkshead. During the hearing, Employer's Exhibit One and Claimant's Exhibits A through D were entered into evidence. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 20, 2004. She worked full-time working in the stuff and hang department of the employer's Knoxville, Iowa, salami and pepperoni production facility. Her last day of work was March 23, 2011. The employer suspended her that day and discharged her on March 31, 2011. The reason asserted for the discharge was insubordination after two prior disciplinary strikes.

The claimant had been given a first strike warning on June 6, 2010, due to accumulating three incidents of tardiness. She had been given a second strike warning on October 7, 2010, due to accumulating three incidents of unauthorized extended breaks.

On March 23 the claimant's supervisor approached the claimant at about 7:45 a.m. She told the claimant that the claimant's work partner had complained about the claimant not rotating tasks as required, and told the claimant she must rotate. The claimant became somewhat upset and

spoke excitedly, moving her hands, protesting that she was not able to do the heavier work required by rotating in to the other position because of the extreme abdominal pain she had been in for the past several days, of which the supervisor was aware. The supervisor responded, in essence, that it was not her problem, and walked away. The industrial engineer later came over to the claimant and further discussed the matter; the claimant again explained that, due to her severe abdominal pain, she could not do the normal rotation of duties. The employer asserted that when the claimant had been speaking with the supervisor, she had been shouting, yelling, and using vulgar language; the claimant denied shouting, yelling, or using vulgar language on the floor. The employer did not establish that the claimant in fact was shouting, yelling, or using vulgar language on the floor.

Later that morning, the claimant went to the restroom/locker room. While there, the claimant commented to another coworker that she thought the supervisor was lying when she said the claimant's work partner had complained about the claimant not rotating. The supervisor walked into the restroom/locker room at that point and asked if the claimant was talking about her. The claimant responded that if the supervisor wished to discuss the matter further they could go "up front" to the management office. The supervisor agreed she did not wish to discuss it there, went about her business, and left. The employer asserted that the claimant had been shouting at the supervisor in the restroom/locker room, "shushing" her, and telling her not to talk to her; the claimant denied shouting at the supervisor in the restroom/locker room, "shushing" her, and telling her not to talk to her. The employer did not establish that the claimant in fact was shouting at the supervisor in the restroom/locker room, "shushing" her, or telling her not to talk to her

Because the employer concluded that the claimant had been insubordinate to her supervisor on March 23, it considered this to be a third strike under the employer's disciplinary process and discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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.

871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is insubordination against her supervisor. The employer relies on the second-hand account from the supervisor and other employees; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether those persons are credible. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant had in fact been insubordinate. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's April 20, 2011 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw