

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OVITA SANTOS
Claimant

APPEAL NO. 07A-UI-01771-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSCEOLA FOODS CORPORATION
Employer

**OC: 01/21/07 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 13, 2007, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on March 7, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter. Judy Callahan participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a production worker from November 22, 1999, to January 23, 2007. The claimant was warned on January 27, 2005, for calling coworkers names and telling them what to do. She was warned on August 22, 2005, for calling coworkers names and bossing them around. On January 31, 2006, the claimant was warned about using profanity toward a coworker. On December 29, 2006, the claimant was verbally counseled after coworkers complained that she was bossing coworkers around and acting mean to them.

On January 23, 2007, a cost control clerk was conducting a quality audit. The claimant does not speak English well and there was no interpreter present. The clerk made a motion with her hands that was intended to mean for the claimant to push all the hams through the machine. The claimant did not push all the hams through because there were two hams that were bad that should not have gone through the machine in the claimant's judgment, but she was not able to explain it to the clerk and the clerk believed the claimant was just ignoring her. The clerk reported to management that the claimant had refused to follow the clerk's instruction and was ignoring her. The employer discharged the claimant for this conduct on January 23, 2007.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The only person at the hearing with firsthand knowledge of what took place was the claimant. She testified credibly. The evidence fails to establish any current act of misconduct by the claimant.

DECISION:

The unemployment insurance decision dated February 13, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs