IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TRUDY A BAKER
Claimant

CARGILL MEAT SOLUTIONS CORP
Employer

APPEAL NO. 09A-UI-18470-NT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 11/08/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated December 2, 2009, reference 01, which denied benefits based upon the claimant's separation from Cargill Meat Solutions Corporation. After due notice was issued, a telephone conference hearing was scheduled for and held on January 20, 2010. The claimant participated personally. The employer participated by Alicia Alonzo, human resource generalist.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Trudy Baker was employed as a full-time production worker for Cargill Meat Solutions Corporation from November 30, 1999, until November 4, 2009, when she was discharged from employment. The claimant was paid by the hour. Her immediate supervisor was Eged Gould.

The claimant was discharged when the company believed that Ms. Baker had violated a company policy by delaying production when she did not return from a 15-minute break timely. The matter had been reported by a supervisor where Ms. Baker had temporarily been assigned to work on November 3, 2009. On that date, the claimant had returned from her break timely and the production line had not yet started. Another worker who had left for break at the same time had not returned to his production location when Ms. Baker had returned. The claimant was given no indication by the supervisor in the temporary work area that the claimant had returned from break late. The following day, the supervisor reported that Ms. Baker had been late in returning from break.

It is the claimant's belief that the temporary supervisor had intentionally misreported that the claimant had returned late from break. Ms. Baker had previously been assigned to work under that supervisor and had transferred out of the department because she felt that the supervisor was intentionally "harassing" her.

Because the claimant had been twice warned before for similar conduct, she was subject to discharge under company policy and was therefore terminated.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 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 may not be necessarily serious enough to warrant the 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 App. 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

In this case, the claimant appeared personally and testified under oath that she did not, in fact, return from break late on November 3, 2009. Ms. Baker testified that other individuals who worked with her in the line had also not returned from break at the time and that the temporary supervisor did not indicate or allege at that time that Ms. Baker had returned from break late. The employer, in contrast, relies upon hearsay to establish disqualifying misconduct on the part of the claimant. While hearsay evidence is admissible in administrative proceedings, it cannot be accorded the same weight as sworn direct testimony.

The administrative law judge finds the claimant's testimony to be credible and not inherently improbable. Ms. Baker further testified that she has had, in the past, ongoing problems with the supervisor in question and that the claimant had complained to the company in the past of "harassment" by this supervisor.

For the above-stated reasons, the administrative law judge finds that the employer has not sustained its burden of proof in showing intentional disqualifying misconduct on the part of the claimant. Unemployment insurance benefits are allowed, provided Ms. Baker is otherwise eligible.

DECISION:

The representative's decision dated December 2, 2009, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice
Administrative Law Judge

_____
Decision Dated and Mailed

kjw/kjw