

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTINA TAPP**

Claimant

**APPEAL NO: 13A-UI-03922-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTION CORPORATION**

Employer

**OC: 03/17/13**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 1, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 1, 2013. The claimant participated in the hearing with Brian Ulin, Full-Time Union Representative. Angie Stevens, Human Resources Generalist, participated in the hearing on behalf of the employer.

**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 production worker for Cargill Meat Solutions from September 10, 2012 to March 18, 2013. Her shift ran from 2:25 p.m. to 11:00 p.m. On March 15, 2013, around 4:00 p.m. the claimant told her supervisor, Isaac Hernandez, that she was leaving at first break because her mother-in-law was in town from Chicago. She rarely saw her mother-in-law and wanted to spend time with her. She was also starting to get a migraine headache before she left for break. The claimant clocked out at 5:00 p.m. for break and left the facility. She knew she would receive one attendance point but only had five points out of a possible eight points. The claimant had not received any verbal or written warnings about her attendance.

On March 18, 2013, Mr. Hernandez reported the claimant left the company property without permission March 15, 2013. He stated he did not know what time she left but she failed to return after first break. Human Resources Generalist Angie Stevens met with the claimant and asked her why she left without permission and the claimant stated Mr. Hernandez gave her permission earlier in her shift for a personal matter and then she had a migraine. Mr. Hernandez had told Ms. Stevens the claimant stated she may have to leave early for personal reasons but was not sure and consequently no decision on whether she could leave early had been made. Ms. Stevens asked the claimant if she had experienced migraines in the past and the claimant indicated she had. Ms. Stevens then asked the claimant if she notified

her supervisor before leaving on previous occasions and she stated she had. Ms. Stevens asked her why she did not tell Mr. Hernandez this time and the claimant said she did not think about it because her head hurt. The employer terminated the claimant's employment March 18, 2013, solely for leaving the company property without permission.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. 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 claimant told Mr. Hernandez she planned to leave at 5:00 p.m., the time of the first break, because she wanted to see her mother-in-law. She then developed a migraine headache and left at first break without speaking to Mr. Hernandez further. There was a misunderstanding between the claimant and Mr. Hernandez about whether she was definitely leaving at 5:00 p.m. The

claimant believed Mr. Hernandez was clear she planned to leave at 5:00 p.m. to visit with her mother-in-law and would not be returning regardless of whether she had a migraine or not. She expected she would receive one attendance point for her absence but did not believe she was placing her job in jeopardy. While it is possible the claimant should have communicated her plans to Mr. Hernandez more clearly and definitively, she believed he was aware she planned to leave at 5:00 p.m. and would not be returning to work that day. Additionally, even if the claimant did leave without permission, this was an isolated incident of misconduct and as such does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The April 1, 2013, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css