

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAWA E AWAD
Claimant

APPEAL NO. 09A-UI-11918-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINERIDGE FARMS LLC
Employer

OC: 07/12/09
Claimant: Appellant (1)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 13, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 17, 2009. Claimant participated. Employer participated by John Anderson, director of human resources. The employer was represented by Ben Roach, attorney at law. The record consists of the testimony of the following individuals: John Anderson, Juana Rocha; Veronica Mesa; Hawa Awad; and Pedro Vazquez. The record also consists of claimant's exhibit A and Employer's Exhibit One. Nyigeelo Gon served as Arabic interpreter for the claimant.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a pork processor. The claimant was hired on February 13, 2009, as a production worker on the line. The employer has a policy against harassment and discrimination in the workplace. This policy is contained in the employee handbook and was explained to the claimant at the time of her orientation.

The incident that led to the claimant's termination occurred on July 9, 2009. The claimant had come to John Anderson, human resources manager, concerning some derogatory comments made by other employees. The claimant had not personally heard the remarks, but a friend of hers had. In the course of his investigation, Mr. Anderson discovered that the claimant and another employee, Juana Rocha, had had a confrontation. During the confrontation, the claimant spit in Ms. Rocha's face and said "bad things" about Mexican employees. Mr. Anderson told the claimant to go home for the rest of the day while he continued to investigate the matter. As the claimant left the office, she said in a loud voice that she hated the "f...ing Mexicans.

Mr. Anderson continued to investigate the incident and spoke to other employees who might have witnessed what occurred. The claimant was suspended for two days on July 9, 2009, and July 10, 2009. The employer concluded that the claimant had violated the harassment and discrimination policy and that termination was justified. The claimant was terminated on July 13, 2009.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Profanity or other offensive language in a confrontational or disrespectful context may constitute misconduct, even in isolated situations in which the target of the statements is not present to hear them. See *Myers v. EAB*, 462 N.W.2d 734 (Iowa App. 1990)

The evidence in this case established that the claimant did use vulgar language in reference to Mexican workers in the plant and that there was a confrontation between the claimant and another employee where the claimant spit in her face. The employer had a policy prohibiting harassment and discrimination and the claimant was aware of that policy. The employer would also have an interest in preventing behavior that would constitute physical provocation, such as

spitting. Such an action could be understood as a threat of violence. The claimant's actions were a material breach of the employer's interest in maintaining a safe workplace. Benefits are denied.

DECISION:

The decision of the representative dated August 13, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs