

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARACILE ROSALES

Claimant

APPEAL NO. 10A-UI-15424-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GLOBAL FOODS PROCESSING INC

Employer

OC: 10/03/10

Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Aracile Rosales (claimant) appealed an unemployment insurance decision dated November 3, 2010, reference 02, which held that she was not eligible for unemployment insurance benefits because she was discharged from Global Foods Processing, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 27, 2010. The claimant participated in the hearing with Attorney Dennis McElwain. Her husband, Marion Rosales, was present but did not participate. Olga Esparza interpreted on behalf of the claimant. The employer participated through Dolores Guest, Controller; Sheila Dickes, Quality Control; and Jaime Herrera, Production Manager and Interpreter. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time production worker from June 21, 2006 through August 26, 2010, when she was discharged for a repeated policy violation. The employer has Group I and Group II offenses or policy violations. A violation of a Group I offense results in immediate termination, while it takes two violations of Group II offenses to result in termination. The claimant signed for receipt of the employer's handbook on June 21, 2006.

The claimant received a written warning on April 8, 2008 for violation of a Group II offense. Rule number 11 of Group II offenses prohibits the following on the production floor: eating, chewing or possession gum, candy, food of any kind, or pharmaceutical products, including cough drops, throat lozenges, and aspirin. The claimant was observed chewing gum on the

production floor. She signed the warning, which advised her that one more violation of a Group II offense would result in her termination.

On August 25, 2010, Quality Control Sheila Dickes observed the claimant at 8:33 a.m. on the production floor with candy in her mouth. Ms. Dickes called over Production Manager Jaime Herrera to act as a witness and an interpreter. The claimant was questioned as to whether she had candy in her mouth and she admitted in front of both employees that she did. In fact, she had a cough drop that she put between her teeth to show Mr. Herrera. The claimant was directed to leave the line and dispose of the cough drop in the trash can. Ms. Dickes observed the claimant throwing away the cough drop while Mr. Herrera took the claimant's place on the line while she left.

The claimant was given an employee warning notice on August 26, 2010, which advised her she was terminated. Mr. Herrera interpreted the written warning for the claimant and she signed it without asking any questions.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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 claimant was discharged on August 26, 2010 for a repeated violation of a Group II offense. She knew the work rules and knew that she would be discharged if she violated another Group II offense but did it anyway. While the claimant now denies she had anything in her mouth on August 25, 2010 while on the production floor, the preponderance of the evidence confirms that she did. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated November 3, 2010, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw