

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRENDA L HILL**  
Claimant

**APPEAL NO. 07A-UI-07795-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 05-15-07 R: 04**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Brenda Hill filed an appeal from a representative's decision dated August 8, 2007, reference 01, which denied benefits based upon her separation from Tyson Fresh Meats, Inc. After due notice was issued, a hearing was held by telephone on August 29, 2007. Ms. Hill participated personally. The employer failed to respond to the hearing notice and did not participate.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from June 28, 2005 until July 18, 2007 when she was discharged from the employment. Ms. Hill was a full-time production worker and was paid by the hour. The claimant was discharged after she reported an incident that had occurred resulting in bruising of the claimant's arm. A fellow employee had placed a "lard starter" apparatus on the claimant's upper arm which caused bruising. This action was in response to Ms. Hill's "tapping" the other worker on the hand to get his attention while the production line was not running. Ms. Hill and the other worker were on friendly terms and the claimant did not intend to engage in horseplay but only to get the other worker's attention so that she could briefly speak to him. Because the incident resulted in bruising to the claimant's arm, it appears, that the employer believed that the parties had engaged in horseplay and therefore both Ms. Hill and the other worker were discharged.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes based upon the totality of the evidence in the record that the employer has not sustained its burden of proof in establishing intentional disqualifying misconduct on the part of the claimant at the time of separation. The evidence in the record establishes that Ms. Hill did not intend to violate company policy by touching or engaging in horseplay but merely sought to temporarily gain the attention of a fellow worker while the

production line was not running. Unfortunately, the other worker responded by placing a pulling apparatus on the claimant's arm which caused bruising. When the claimant was instructed that she must report the incident because of the bruising, a decision was made by the company to discharge both Ms. Hill and the co-worker.

The question before the administrative law judge in this case is not whether the employer has a right to discharge an employee for this reason but whether the discharge is disqualifying under the provisions of Iowa law. While the decision to terminate Ms. Hill may have been sound from a management viewpoint, the evidence does not establish intentional disqualifying misconduct on the part of this claimant. The administrative law judge, therefore, categorizes the claimant's conduct as an isolated incident of poor judgment that did not rise to the level of intentional disqualifying misconduct.

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.

For the reasons stated herein, the administrative law judge finds that the claimant's discharge was not disqualifying. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated August 8, 2007, reference 01, is hereby reversed. Claimant was discharged under nondisqualifying conditions. Claimant is eligible to receive

unemployment insurance benefits, provided that she meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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