

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICOL J JACOBS**  
Claimant

**APPEAL NO. 12A-UI-13476-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HORMEL FOODS CORPORATION**  
Employer

**OC: 10/14/12**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from a representative's decision dated November 2, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on December 11, 2012. Claimant participated. Employer participated by Mr. Frank Velazquez, Human Resource Manager, and Mr. Carl Polton, Production Supervisor.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Nicol Jacobs was employed by Hormel Foods Corporation from September 13, 2011 until October 16, 2012 when she was discharged from employment. Ms. Jacobs was employed as a full-time machine operator working from 5:18 p.m. until 3:48 a.m. The claimant was paid by the hour. Her immediate supervisor was Judy Schields.

Ms. Jacobs was discharged based upon her refusal to continue to work a job assignment that had been given to her by the company on the night of October 15, 2012. On that date the claimant's usual production line was not running and the claimant signed up by seniority to accept two different jobs that evening; the second of which to begin at approximately 8:00 p.m. Subsequently, a worker, who the employer thought would be absent reported and was assigned to perform one of the jobs that Ms. Jacobs had signed up for. The claimant believed that she had more seniority and protested to the union and to management.

It was determined that the second worker had properly been assigned to the job under the circumstances and that because Ms. Jacobs had been performing the job that she was on at the time for over an hour she "owned the job" and should continue working that job as instructed by

her employer. This matter was confirmed by both management and the claimant's union representative to the claimant.

The claimant became upset and stated that she was leaving because she was having "an anxiety attack." Mr. Polton, the Production Supervisor, specifically informed the claimant that leaving under those circumstances would be considered to be job abandonment and would cause the claimant to lose her employment. The claimant had been specifically warned for a previous incident of job abandonment in March 2012 and had been warned at that time that future occurrences of that nature would result in her termination from employment. The claimant, nevertheless, elected to leave that night.

Approximately two hours after leaving, Ms. Jacobs sent a voice message to Mr. Polton and a telephone conversation between the parties ensued. During that conversation, the claimant was instructed to calm herself and to return back to work "tonight." Although the claimant had agreed to do so by phone, she did not report back that night but instead reported the following day. A meeting was held between the claimant's union representative and management and the employer concluded the claimant had chosen to walk off the job violating the previous warning that had been served upon her. The claimant was suspended pending further investigation and the claimant was subsequently discharged from employment.

It is the claimant's position that she did not understand that she was to return to work that night or the claimant maintains that she was unable to work earlier due to an "anxiety attack." It is claimant's position that the effects of the anxiety attack had subsided at approximately 11:30 p.m. that night but that she would have been willing to return to work earlier had she understood that she was expected to do so.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 insurance benefits. 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 Ct. of Appeals 1992).

In this matter the testimony is disputed. The administrative law judge, having considered the testimony of the witnesses at length concludes that the employer has sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions.

The evidence in the record establishes that Ms. Jacobs had previously been warned for walking off the job and knew or should have known that her employment was in jeopardy if she walked off the job without authorization in the future. On the night of October 15, the claimant was dissatisfied because she felt a person with less seniority had temporarily been assigned to a job that Ms. Jacobs preferred. The matter was brought to the attention of the union and management and both the union and management agreed that the job assignments that night did not violate the bargaining agreement. When the claimant was told that she was expected to return to the job that she had previously bid upon that night she then indicated that she was suffering an anxiety attack and could not work. Although the claimant was repeatedly reminded that the employer did not believe her excuse to be credible and that leaving would be tantamount to job abandonment, Ms. Jacobs nevertheless left but later called indicating a willingness to return to work. The testimony of Mr. Polton is specific that the claimant was instructed to return to work "tonight" and that the claimant acknowledged the production supervisor's expectations that she would return to work that same work night. In contrast, the claimant's testimony at times is contradictory. The administrative law judge finds Mr. Polton to be a more credible witness and finds that his testimony is not inherently improbable.

Based upon the previous warning that had been served upon the claimant, the claimant's walking off the job without authorization and the claimant's failure to return to work that night after agreeing to do so, the administrative law judge concludes that the claimant's conduct was in willful disregard of the employer's interests and standards of behavior that the employer had a reasonable right to expect of its employees under the Iowa Employment Security Law. The employer has sustained its burden of proof in establishing job disqualifying misconduct. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.
  - a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the

overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated November 2, 2012, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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