

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANA SIGALA
Claimant

APPEAL NO: 09A-UI-14783-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 09-13-09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 1, 2009, 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 October 22, 2009. The claimant participated in the hearing. Alicia Alonzo, Human Resources, 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 April 29, 2008 to September 16, 2009. On September 16, 2009, the claimant was coming on to her shift with her husband when production worker Amber Ramos was coming off her shift. Ms. Ramos was yelling and pointing at the claimant and then told the claimant's husband she was a "lying bitch" and a "c**t." The claimant pushed Ms. Ramos and when the claimant's husband stepped in front of her to prevent the confrontation from getting further out of control the claimant slapped him. A supervisor witnessed the incident and two supervisors took the claimant to the Human Resources office and Ms. Ramos was brought up later. The claimant stood up when Ms. Ramos got there and fearing another incident a supervisor grabbed the claimant's arm and said let's go into the Human Resources office. After meeting with the claimant and supervisor, Human Resources Manager Katie Holcomb terminated the claimant's employment for fighting on company property. The claimant testified that she is bi-polar and even though she has been taking medication for her illness she lost her temper and pushed Ms. Ramos and slapped her husband. She told Ms. Holcomb that Ms. Ramos had been harassing her for approximately one month by coming to her department and threatening to "kick her ass" and calling her a "stupid c**t." Ms. Ramos talked to the claimant's supervisor and told him that he should fire her and he laughed. She called the claimant names, threatened to meet her at her car and said she knew where she lived. The claimant talked to her supervisor about the problem but he told her to "let it be" because Ms. Ramos would not do anything. The claimant bid to the second shift and was

moved and did not have any other problems with Ms. Ramos until September 16, 2009. She did not go to Human Resources or her union when her supervisor did not respond in a manner that satisfied her. During the termination meeting the claimant told Ms. Holcomb that because no one did anything about the harassment she "took things into (her) own hands." The employer has posters up in the hallway where employees enter and exit and in the pre-employment center where employees spend time stating if an employee has a problem with harassment they should "come to Human Resources."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant was discharged from her employment for pushing a coworker and slapping her husband. While Ms. Ramos was yelling at the claimant and pointing her finger at her, let alone using a deplorable word used to denigrate women, the claimant did not attempt to retreat or seek supervisor assistance. Instead she shoved Ms. Ramos and slapped her husband when he stepped in front of her in an attempt to stop a further physical confrontation. Although Ms. Ramos definitely played a major role in the situation and it seems clear that she harassed the claimant during the last month of her employment, the claimant bid to second shift to get away from her but did not go to Human Resources or her union when her supervisor did not

respond the way one would hope a supervisor would respond under the circumstances. Regardless of Ms. Ramos' verbal harassment the claimant cannot counter the harassment by reacting physically. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The October 1, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs