

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MIRTA J MEDINA
Claimant

APPEAL NO. 18A-UI-07204-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEABOARD TRIUMPH FOODS LLC
Employer

OC: 06/10/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Seaboard Triumph Foods (employer) appealed a representative's June 27, 2018, decision (reference 01) that concluded Mirta Medina (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 23, 2018. The claimant participated personally through Sati Pimentel, interpreter. The employer participated by Christina Scott, Human Resources Generalist. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 28, 2017, as a full-time bone picnic/general labor. She speaks Spanish and does not read English. Prior to working for the employer she worked for Tyson. She reported to Tyson that her shoulder hurt and they sent her to a nurse. Tyson denied the workers' compensation claim.

On August 2, 2017, the claimant filled out documents to apply for a job with the employer. The documents were in English and there were interpreters who wrote her answers. One of the documents was a Health History Questionnaire. Above her signature on August 2, 2017 it read, "I certify that the information on this form is true and correct". The claimant listed her previous employer, Tyson. The form asked "Have you ever been treated by a doctor for any pre-existing injury (i.e. amputation, tendonitis, pain, overuse syndrome, or cumulative trauma) for shoulders. The claimant's interpreter marked the "no" box. The form asked "Have you ever seen a doctor for a workers compensation claim for shoulders". The claimant's interpreter marked the "no" box.

While working for the employer, the claimant injured both hands. On May 14, 2018, the company doctor restricted the claimant from using knives at work. On June 6, 2018, the employer terminated the claimant. The employer believed the claimant saw a doctor regarding her shoulder injury at Tyson but did not know when. Therefore, she falsified her Health History Questionnaire.

The claimant filed for unemployment insurance benefits with an effective date of June 10, 2018. The employer provided the name and number of Melissa Sedillo as the person who would participate in the fact-finding interview on June 26, 2018. The fact finder called Ms. Sedillo but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Casper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer did not provide any evidence of job-related misconduct. The claimant was truthful on the Health History Questionnaire. The employer terminated the claimant after she was injured at work and was on restricted duty. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's June 27, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs