

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NORMA M SALAZAR
Claimant

APPEAL NO. 08A-UI-08813-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION
Employer

**OC: 08/31/08 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Norma Salazar filed an appeal from a decision of a representative dated September 30, 2008, reference 01, which denied benefits based upon her separation from Titan Tire Corporation. After due notice was issued a hearing was held by telephone on October 17, 2008. Ms. Salazar participated personally. The employer participated by Joyce Kain, Human Resources Manager. Official interpreter was Ms. Anna Cox.

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 December 1999 until August 25, 2008 when she was discharged for failure to possess a valid work authorization. Ms. Salazar held the position of full-time inspector and was paid by the hour. Ms. Salazar was discharged when she failed to provide a valid work authorization to her employer verifying that she was a citizen or authorized to work in the United States. An employer who fails to obtain documentation that an individual is a citizen or authorized to work is in violation of the Immigration Reform and Control Act. Although Ms. Salazar was aware that she was required to maintain a valid work authorization, the claimant failed to maintain the work authorization as required and was discharged.

The claimant's delay in providing her most recent work authorization took place due to a delay with the Immigration and Naturalization Service. Ms. Salazar received her work authorization on approximately August 30, 2008 and has subsequently been seeking employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Salazar was discharged for misconduct in connection with the employment. It does.

The claimant was discharged when she failed to maintain the proper authorization to be employed in the United States as an alien. Ms. Salazar's failure to maintain the required licensing was in disregard of the employer's interests and standards of behavior. The employer is required by law to verify that each employee is a citizen or possesses a valid work authorization card to perform work in the United States. Ms. Salazar was aware that it was a job requirement to maintain and provide work authorization, but failed to do so.

Iowa Code section 96.5-10 provides:

10. Aliens—disqualified. For services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

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.

For the reasons stated herein, the administrative law judge concludes the claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld. The claimant is able and available to work at the time of hearing and now possesses a valid work authorization.

DECISION:

The representative's decision dated September 30, 2008, reference 01, is affirmed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs