

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**YAQUELIN M MORENO AVILA**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 21A-UI-23557-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/29/21**  
**Claimant: Appellant (2)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant/appellant, Yaquelin M. Moreno Avila, filed an appeal from the October 14, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits based upon the reason she no longer works (or separated) from employment at Tyson Fresh Meats Inc. The parties were properly notified about the hearing. A telephone hearing was held on December 14, 2021. The claimant participated personally, through a Spanish interpreter with CTS Language Link. She was represented by Mary Hamilton, attorney at law. The employer/respondent, Tyson Fresh Meats Inc., did not respond to the notice of hearing and did not participate. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged (fired) for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time in production and was separated from employment on August 24, 2021, when she was fired for reportedly pushing her supervisor.

Claimant began employment in 2017. She was trained on employer rules and procedures and acknowledged that if she physically touched a supervisor, it would violate employer rules. Claimant had no prior warnings. Claimant previously had been injured on the job. The injury was to her left arm, shoulder and ribs. She had been off work and returned to work on August 24, 2021 with restrictions that prevented her from working at 100% her usual capacity.

Claimant began her work and her supervisor confronted her for her work product. He called her disrespectful and yelled at her. Claimant did not yell back, but told him to calm down. He told her to go to the office with him and she left the line as directed. Claimant began experiencing chest pains and went to the infirmary. When she tried to enter office, her supervisor blocked her

entry with his body and his hands. He eventually moved out of the way. Claimant denied making any physical contact with him, yelling at him, or cursing at him. There were no witnesses to the incident, but the employer had video cameras in the area. Claimant was never shown any video footage of the event after the supervisor reported she pushed him. Claimant was fired based on his report. Claimant doesn't know if he was disciplined or fired. Employer did not attend the hearing or submit evidence in lieu of live participation in the hearing.

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

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for disqualifying job-related misconduct.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

“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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). 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. App. 1992).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The administrative law judge recognizes an employer has a responsibility to protect the safety of its employees, from potentially unsafe, or threatening conduct in the workplace, in an era where violence in the workplace is real. Employer alleged claimant pushed her manager in the entry way of the infirmary. Claimant denied the conduct.

In the case at hand, the claimant appeared personally, provided sworn testimony, answered questions, and subjected herself to possibility of cross-examination. The employer did not attend, did not refute claimant's evidence or present any evidence in support of why it fired claimant. In the absence of any other evidence of equal weight either explaining or contradicting the claimant's testimony, it is held that the weight of evidence is established in favor of the claimant. Based on the testimony presented, the administrative law judge is not persuaded the claimant shoved the supervisor, as alleged by the employer. At most, the claimant raised his voice, as did the area manager. Employer did not present any evidence to corroborate its allegation of misconduct. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The October 14, 2021 (reference 01) Iowa Workforce Development ("IWD") unemployment insurance decision is REVERSED. The claimant was not discharged for disqualifying job-related misconduct. Benefits are allowed, provided she is otherwise eligible.



---

Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

---

January 18, 2022  
Decision Dated and Mailed

jlb/kmj