

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLISON KLAMPE
Claimant

APPEAL NO: 11A-UI-13106-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 08-28-11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 29, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 26, 2011. The claimant participated in the hearing. Ben Wise, Hiring Supervisor, 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 May 10, 2010 to September 13, 2011. The claimant went on intermittent family and medical leave (FML) in April 2011, because she was experiencing soreness in her back and neck which she had been going through since the birth of her son. On August 23, 2011, the claimant went to the employer's nurse's office because she felt a pop in her shoulder August 3, 2011, and it continued to bother her. She had been to a chiropractor a couple of times since the birth of her son and continued to see him but that was unrelated to her shoulder popping August 3, 2011. On August 10 and 11, 2011, the claimant took intermittent FML because her head, upper back and neck were hurting. She was granted intermittent FML both days. On August 11, 2011, one of the employer's nurses called the claimant and told the claimant she could not use intermittent FML for a work-related injury. The claimant reported for work before her shift and went to the nurses' office where she was told she had to work light duty if it was a work-related injury. The claimant had taken a total of five days off due to her head, neck and shoulder problems since July 2011. She was ready to work August 13, 2011. On August 17, 2011, she was called to the human resources office and told that because the injury was work related her absences August 10 and 11, 2011, resulted in her exceeding the allowed number of attendance points. After discussing the situation with the union the employer decided to have the claimant see the company nurse again to see if her problems were work related. On August 23, 2011, the claimant had an appointment with the company doctor and it was determined her injury was not

work related which meant that her absences August 10 and 11, 2011, should not have counted against her attendance points. While in the doctor's office the claimant was questioned about her medical history and was asked if she experienced chronic back problems since she was five years old. The claimant explained she had suffered from migraines since she was five and the company nurse interrupted her to ask if she had been seeing a chiropractor since she was five and the claimant said no, she had only seen a chiropractor a few times after the birth of her son and again after she hurt her shoulder in April 2011. The claimant was suspended August 25, 2011, and was told the employer needed to review her paperwork. The employer asked her if there was anything from her doctor's appointment she wanted to discuss and the claimant again clarified she had experienced migraines since she was five years old but not chronic back problems. The claimant was placed on an indefinite unpaid suspension. The employer terminated her employment September 13, 2011, after the claimant involved the union because she attempted to reach human resources several times during that time period but did not receive an answer. The employer maintains the claimant falsified her employment application during her pre-hire physical by indicating she did not suffer from back pain or anything of that nature when she had previous back injuries. Falsification of medical information results in immediate termination. The employer was not aware of what investigatory steps were taken regarding this matter or why it took at least three weeks to notify the claimant of her termination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant's first-hand testimony that she never told any of the employer's medical personnel she had suffered from chronic back problems since she was five years old was credible and the employer did not have any first-hand witnesses to contradict her testimony. The claimant agrees she stated she had experienced migraine headaches since she was five but stated she only experienced neck and shoulder pain and sought treatment from a chiropractor after the birth of her child. The evidence does not establish that the claimant falsified her pre-employment physical, or provided any false information regarding her medical information at any time. Consequently, the administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The September 29, 2011, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css