

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LOURDES E HERNANDEZ-CASTELLANOS**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 18R-UI-12016-NM-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 10/07/18**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 24, 2018, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on January 3, 2019. The claimant participated with the assistance of a Spanish language interpreter from CTS Language Link. The employer did not participate.

**ISSUE:**

Was the claimant discharged for disqualifying misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a production worker from September 9, 2017, until this employment ended on June 6, 2018, when she was discharged.

The last day claimant worked for the employer was May 31, 2018. Her work authorization expired on that date and she gave birth the following day, June 1, 2018. Claimant had applied for work authorization renewal on January 27, 2018, but her application was still being processed on May 31, 2018. Renewals generally are approved within 90 days of application, but claimant was advised by U.S. Customs and Immigration that they were experiencing a large backlog. Claimant believed she was beginning maternity leave on June 1 and would return to work following her eight-week leave. However, on June 6, 2018, claimant received notice from the employer that she was being separated from employment, as she did not have valid work authorization. Claimant was informed that if her work authorization was approved within the next 90 days she could reapply and would be reinstated.

By the time the 90-day period was up, claimant still had not received her work authorization card, but did receive notice that it was going to be approved. Claimant took the approval notice to the employer of September 3, 2018, but was told nothing could be done until she got her

actual work authorization card. Several weeks later claimant received her work authorization card, which allowed her to work in the United States from September 25, 2018 through September 24, 2019. The same day she received the card in the mail claimant took it into the employer to see if she could return to work, but was advised no work was available.

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

For the reasons that follow, the administrative law judge concludes 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant was aware that she was required to be legally authorized to work in the United States in order to maintain employment. Claimant was also aware her work authorization expired on May 31, 2018 and that reauthorization applications could take up to 90 days to process. With this in mind, claimant applied for reauthorization on January 27, 2018, more than 120 days before her work authorization was set to expire. Due to no fault of the claimant, U.S. Customs and Immigration had not yet approved her application as of May 31, 2018, when she went on maternity leave. Claimant was separated from employment due to lack of work authorization on June 6, 2018, but was told she would be reinstated if she received her authorization within 90 days. Claimant's work authorization was not approved until September 25, 2018. Claimant presented her valid authorization to the employer the same day it was received, but was told no work was available. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Here, claimant did everything she could to get her work authorization renewed prior to expiration, but was unable to do so due to circumstances beyond her control. Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

**DECISION:**

The October 24, 2018, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs