

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BREANNE L SPORE
Claimant

APPEAL NO. 06A-UI-09914-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

**OC: 09-03-06 R: 03
Claimant: Appellant (1)**

Section 96.5(2)(a) – Discharge for Misconduct
871 IAC 24.35(2) – Late Appeal/Timeliness

STATEMENT OF THE CASE:

The claimant appealed a fact-finder's decision dated September 26, 2006, reference 01, that concluded that the claimant was not eligible to receive unemployment insurance benefits because she had been discharged for violation of a known company rule. The claimant filed an appeal that was received on October 10, 2006, four days past the prescribed appeal period. The delay in appealing was caused by the necessity of the claimant to obtain assistance due to learning disability. The administrative law judge finds good cause for a late filing has been established. After hearing notices were mailed to the parties, a telephone conference hearing was conducted from Des Moines, Iowa on October 24, 2006. The claimant participated. Appearing as a witness for the employer was Charlene Schuman, Human Resources Coordinator. Appearing as a potential witness was Jennifer Stubbs. Exhibits One through Nine were received into evidence.

ISSUES:

Has the claimant established good cause for failing to file a timely appeal? Did the claimant voluntarily quit employment for reasons that qualify her to receive unemployment insurance benefits or did the employer discharge 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's late appeal was due to factors beyond her control. The claimant has a learning disability and it was necessary for the claimant to obtain assistance in filing her appeal. Ms. Spore was employed by Beef Products, Inc. from October 20, 2005 until September 5, 2006, when she was discharged by the employer. Claimant worked as a production worker and was paid by the hour. Her immediate supervisor was Robert Davidson.

The claimant was discharged after it was determined that the claimant had engaged in "horseplay" on the production floor on or about September 2, 2006. The claimant at that time engaged in hitting another worker on the hard hat in response to that worker's similar gesture. The conduct was observed by other personnel and the employer reasonably concluded the

claimant was engaging in horseplay in violation of a known and established company rule. The claimant had previously been warned for other rule violations and had received a final warning from the company. The claimant was aware that any further violations of company rules could result in her termination from employment. In hindsight the claimant agrees that she should have contacted the supervisor to end the horseplay and not have engaged in the conduct herself.

REASONING AND CONCLUSIONS OF LAW:

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

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 hearing record establishes that Ms. Spore had been warned for other violations of company policy and had received a final warning and was aware that further violations of company could result in her discharge from employment. The claimant was discharged after she was observed engaging in "horseplay" with another employee on September 2, 2006 on the production floor in violation of a strict and well-known company policy. When a fellow employee engaged in horseplay, Ms. Spore responded in the same manner instead of contacting a supervisor to end the horseplay between the parties. This conduct showed a disregard of the employer's interests and standards of behavior and jeopardized the safety and well being of the claimant as well as other workers. The employer has, therefore, sustained its burden of proof in establishing that the claimant's discharge took place for reasons that are disqualifying under the provisions of the Iowa Employment Security Law.

DECISION:

The fact-finder's decision dated September 26, 2006, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment insurance

benefits until she has worked in and has been paid wages for insured work equaling ten times the weekly benefit allowance, provided that she meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/kjw