

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUANA Y PEREZ

Claimant

APPEAL NO. 23A-UI-09907-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 09/24/23

Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) & (d) – Discharge

STATEMENT OF THE CASE:

On October 17, 2023, Juana Perez (claimant) filed a timely appeal from the October 12, 2023 (reference 01) decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on September 13, 2023 for conduct not in the best interests of the employer. After due notice was issued, a hearing was held on November 3, 2023. Claimant participated. The employer received appropriate notice of the hearing but did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate in the hearing. Spanish-English interpreter Hared (#12957) of CTS Language Link assisted with the hearing.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Juana Perez (claimant) was employed by Tyson Fresh Meats, Inc. as a full-time meat processing line production worker from 2003 until September 15, 2023, when the employer discharged her from the employment. The discharge was triggered by an incident on September 13, 2023. On that day, Ms. Perez was working at her line position when a new line supervisor, Laura, yelled at Ms. Perez as she approached Ms. Perez from behind. The supervisor yelled, "What is going on, why are you not opening the squares?" Ms. Perez's production line duties involved removing bone from meat "squares." When Ms. Perez turned around, the supervisor yelled at Ms. Perez and said, "You have to open this one." Ms. Perez was experiencing a problem with how the product was coming to her from earlier in the production line. The product was coming to Ms. Perez with broken bone, which made Ms. Perez's task of removing the bone more difficult. Ms. Perez responded, "Don't you see what is going on---the problem is not down here, it is over there." Ms. Perez had been working with her assigned cutting knife. Ms. Perez had the knife in hand when she turned to speak with the supervisor. Ms. Perez held the knife at her side with the blade pointed toward the floor while speaking with the supervisor. Ms. Perez asked the supervisor to go check on the earlier point in

the production line. Instead, the supervisor directed Ms. Perez to put her knife down and to accompany the supervisor.

The supervisor sent Ms. Perez to the general supervisor's office. When the general supervisor arrived, Ms. Perez explained that many of the squares were coming to her with broken bone. The general supervisor told Ms. Perez he would check the surveillance cameras. The general supervisor directed Ms. Perez to go sit in the cafeteria and wait to speak with human resources.

Soon thereafter, the employer summoned Ms. Perez to meet with the general supervisor, the line supervisor, and a human resources representative. The human resources representative asked Ms. Perez whether she had been moving her hands while holding the knife. Ms. Perez denied that she had done so. The human resources representative directed Ms. Perez to surrender her employee ID badge. The human resources representative told Ms. Perez she was suspended until she heard further from the employer. The general supervisor then escorted Ms. Perez from the workplace.

On September 15, 2023, the employer summoned Ms. Perez to a meeting and discharged her from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(1) Material falsification of the individual's employment application.

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

...

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text of the statute).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). 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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See Iowa Administrative Code rule 871-24.32(4).

The evidence in the record establishes a September 15, 2023 discharge for no disqualifying reason. The employer did not participate in the appeal hearing and did not present any evidence to meet its burden of proving a discharge based on misconduct in connection with the employment. The evidence in the record does not indicate misconduct in connection with the employment. The evidence establishes that the supervisor approached the claimant in an unnecessary loud, heavy-handed manner. The claimant had been performing her work duties with her assigned knife. The claimant, 20-year employee, had a reasonable concern about the condition of the product arriving at her production line station. The claimant attempted to explain the issue to the new supervisor. The claimant had a knife in her hand only because her assigned duties involved constantly using the knife. The evidence in the record fails to establish the claimant pointed or waived the knife in the supervisor’s direction. The new supervisor elected to escalate the matter with an allegation involving the position of the knife, rather than address the production line issue the claimant raised. The employer presented no testimony to rebut the claimant’s testimony regarding the incident that triggered the discharge. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer’s account may be charged for benefits.

DECISION:

The October 12, 2023 (reference 01) decision is REVERSED. The claimant was discharged on September 15, 2023 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

November 6, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.