IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

JILL HOUSTON
Claimant

CARGILL KITCHEN SOLUTIONS INC
Employer

APPEAL NO. 14A-UI-04499-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/30/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jill Houston (claimant) appealed an unemployment insurance decision dated April 18, 2014, (reference 01), which held that she was not eligible for unemployment insurance benefits because she was discharged from Cargill Kitchen Solutions, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 20, 2014. The claimant participated in the hearing. The employer participated through Jessica Brown, Microbiology Team Lab Leader and Nancy Troe, Human Resources Generalist.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed from November 15, 2010, through April 1, 2014, when she was discharged. She most recently worked as a full-time swing sanitation team member and a buddy (trainer), for which she received additional pay. The claimant was discharged for previous attendance issues and a safety violation on March 28, 2014.

The employer's attendance policy provides for a written warning at six occurrences, a suspension at seven occurrences and a discharged at eight occurrences. The claimant signed a written warning on January 24, 2014, when she had eight late occurrences. Her team leader had failed to keep track of the occurrences so she was not discharged at that time but was advised that she would be discharged if she was late one more time.

On March 28, 2014, the claimant engaged in horseplay with a co-employee in the kitchen when she took a sanitation hose and sprayed him with water. The incident was intentional horseplay that resulted in a near-miss incident or injury. The claimant admitted her actions were wrong but objected because she believed there were other disciplinary actions that could have been taken. The other employee that was involved received a three-day suspension. There was a third employee involved but the employer was unaware of the third employee's involvement.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1)**.**

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged for previous attendance issues and a safety violation on March 28, 2014, which resulted in a near-miss incident or injury. She could have been discharged for her attendance in January 2014, but was given a final warning instead. However, the claimant's intentional actions on March 28, 2014, demonstrate a continued and deliberate disregard of the employer's interests. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 18, 2014, (reference 01), is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs