

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANA MARTINEZ
Claimant

APPEAL NO. 07A-UI-06961-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN MORRELL & CO
Employer

**OC: 06/17/07 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32 (9) – Suspension/Disciplinary Layoff

STATEMENT OF THE CASE:

Ana Martinez (claimant) appealed an unemployment insurance decision dated July 12, 2007, reference 01, which held that she was not eligible for unemployment insurance benefits because she was placed on a disciplinary suspension with John Morrell & Co (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 1, 2007. The claimant participated in the hearing with Attorney Jay Smith. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted and, therefore, did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer suspended the claimant 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 hired as a full-time production worker in July 1996. She was suspended for three weeks beginning June 18, 2007. The claimant was suspended for getting into an argument with a co-worker about work.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined in this matter is whether the claimant's disciplinary suspension was for any disqualifying reason. Where an individual is unemployed as a result of a disciplinary suspension imposed by the employer, the individual is considered to have been discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9). An individual who was discharged or suspended for misconduct is disqualified from receiving job insurance benefits. See Iowa Code section 96.5-2-a.

In order for a suspension to be a disqualifying event, the evidence must establish that the suspension was for misconduct in connection with the individual's employment. See 871 IAC 24.32(9). Misconduct is defined as deliberate actions contrary to the employer's interest. See 871 IAC 24.32(1).

When misconduct is alleged as the reason for the discharge (suspension) and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. The employer failed to meet its burden. Work-connected misconduct has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated July 12, 2007, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css