

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARICELA T TAPIA
Claimant

APPEAL NO. 08A-UI-05159-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CURLYS FOODS
Employer

**OC: 05-04-08 R: 01
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 29, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 18, 2008. The claimant did participate through the interpretation of Isaura Broste. The employer did participate through Betty Lopez, Human Resources Assistant, and Richard Cox, Production Manager.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a production worker/general laborer full time beginning May 25, 2005, through May 2, 2008, when she was discharged.

On Thursday, May 1, the claimant refused to follow orders given by a lead worker, Louis Hermosillo. The claimant was to break boxes and to stack them in trash combos. The boxes needed to be broken down flat so that more would fill the combo. Mr. Hermosillo told the claimant she was not breaking the boxes down properly and that she should make them flat. When the claimant did not break down the boxes to suit Mr. Hermosillo, he called over the Supervisors Lee and Richard Cox. Mr. Cox examined the boxes that the claimant was breaking down and noted that they were the same type of boxes the claimant had broken down many times before.

The claimant had been previously disciplined for insubordination on May 4, 2007, when she was suspended for three days for her failure to take meat out of a barrel.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. IDJS*, 367 N.W.2d 300 (Iowa App. 1985). The claimant was instructed to break down the boxes so that they would be flat and fit into a combo. The claimant had on previous occasions performed this task successfully. When Mr. Hermosillo saw that she was not breaking down the boxes correctly, he instructed her to do so. She did not. The boxes were observed by Mr. Cox, who testified at the hearing that all the boxes were the same as what the claimant had previously broken down. Claimant's repeated failure to adequately and fully perform her job duties after having established the ability to do so is evidence of her willful intent not to do so and is misconduct. Benefits are denied.

DECISION:

The May 29, 2008, reference 01 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw