

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

YESSICA RICHARDSON
Claimant

APPEAL 20A-UI-05788-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 04/19/20
Claimant: APPELLANT (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, Available for Work

STATEMENT OF THE CASE:

On June 10, 2020, the claimant filed an appeal from the June 1, 2020, (reference 01) unemployment insurance decision that denied benefits based on violation of a company rule. The parties were properly notified about the hearing. A telephone hearing was held on July 9, 2020. Claimant participated and was represented by attorney Laura Folkerts. Claimant called Karin Rowe as a witness. Employer participated through Lori Direnzo, Human Resources Administrator. Claimant offered two exhibits. The exhibits were admitted into the record as Exhibit A and Exhibit B. The hearing was interpreted.

ISSUE:

Did claimant commit job related misconduct?
Is claimant able and available to work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 24, 2019. Claimant last worked as a full-time production worker. Claimant was separated from employment on April 14, 2020, when her employer terminated her employment. The employer terminated claimant based upon their belief that claimant's work authorization provided by the U.S. Immigration and Naturalization Services had expired. In January 2020 the employer sent a notice to claimant that she needed to renew her work authorization by April 12, 2020. Claimant worked with an immigration lawyer to renew her work authorization. Claimant submitted an application to renew her work authorization. U.S. Immigration and Naturalization Services, Vermont Service Center, received her application on January 31, 2020. (Ex. A, p. 10)

The filing of the application automatically extended claimant's work authorization for six-months from April 12, 2020. (Ex. A, pp.2, 8; Ex. B, p. 2) Claimant's attorney, para legal, sent the employer a letter on February 21, 2020 explaining that claimant's work authorization had been extended to October 7, 2020. (Ex. B, p. 2) Claimant talked to Azra Covic in the Human Resources department

at Tyson about this letter and was not asked to provide any additional documentation regarding her immigration status. On April 13, 2020 claimant's immigration attorney emailed additional information showing that claimant was work authorized. The employer fired claimant the next day, April 14, 2020.

Claimant testified that she is currently work authorized. Claimant is able and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons stated below I find claimant is eligible for unemployment benefits.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:


3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 38, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Claimant did not commit any job related misconduct. Claimant did not violate company rules or policy. Claimant was and still is work authorized. Claimant is able and available for work. It is clear that Ms. Covic from the Human Resources department failed to note claimant's work authorization in February 2020 and on April 13, 2020.

The claimant is eligible for unemployment compensation benefits based upon her separation from employment and is able and available for work.

DECISION:

The June 1, 2020, reference 01, decision denying benefits is reversed. Claimant is eligible for unemployment benefits, if otherwise qualified.



James F. Elliott
Administrative Law Judge

July 16, 2020
Decision Dated and Mailed

je/scn