

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARIA L CASTELLANOS**  
Claimant

**APPEAL 19A-UI-00652-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROSE ACRE FARMS**  
Employer

**OC: 12/30/18  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2) – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32 – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Maria Castellanos, Claimant, filed an appeal from the January 16, 2019 (reference 01) unemployment insurance decision that denied benefits because she was discharged from work with Rose Acre Farms for causing dissension. The parties were properly notified of the hearing. A telephone hearing was held on February 7, 2019 at 3:00 p.m. Claimant participated and was represented by attorney Jim Duff. Spanish interpretation was provided by Virginia (ID number 6479) from CTS Language Link. Employer participated through Kathleen Baute, Director of Minority Relations. Employer's Exhibits 1 – 12 were admitted.

**ISSUE:**

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a general laborer from May 16, 2017 until her employment with Rose Acre Farms ended on January 2, 2019. (Baute Testimony) Claimant's direct supervisor was Kris Randol, Assistant Production Manager. (Baute Testimony)

Claimant was issued corrective action forms for various job performance-related issues on July 9, 2018, September 18, 2018, and November 21, 2018. (Exhibits 1, 2 & 8) Claimant was given a verbal warning regarding her job performance on November 2, 2018. (Exhibits 3, 4 & 5) Claimant was given a verbal warning regarding her work attire on November 21, 2018. (Exhibit 6 & 7) On December 19, 2018, claimant chastised a coworker for not following proper procedure. (Baute Testimony) Claimant received no prior warnings regarding correcting or chastising her coworkers. (Claimant Testimony)

Employer provided the following documentation regarding the December 19th incident: a statement by the coworker dated December 20, 2018; a statement by claimant dated December 21, 2018 and an email Baute sent to the vice president of human resources on December 27, 2018. (Exhibits 9, 10 & 11) Employer alleges that claimant had been warned

multiple times not to correct or chastise her coworkers but, instead, to bring the issue to her supervisor's attention. (Baute Testimony) Employer has a policy against insubordination. (Baute Testimony) The policy is included in the employee handbook. (Baute Testimony) Claimant received a copy of the handbook. (Baute Testimony) On December 20, 2018, employer decided to terminate claimant's employment pending claimant's statement. On December 21, 2018, employer suspended claimant pending employer's investigation into a sexual harassment complaint lodged by claimant. (Baute Testimony) On January 2, 2019, employer terminated claimant's employment due to insubordination for chastising a coworker on December 19, 2018 after employer told her not to. (Baute Testimony)

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Iowa Code section 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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the claimant's version of events to be more credible than the employer's version of those events. Employer's allegation that claimant had been told several times not to correct or chastise coworkers is not credible in light of the lack of supporting documentation compared to the documentation of claimant's job-performance related issues. Furthermore, employer's documentation of its several prior warnings consists of an internal email sent seven days after claimant's suspension and employer's decision to terminate claimant's employment.

Employer has not met its burden of proving disqualifying, job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

**DECISION:**

The January 16, 2019 (reference 01) unemployment insurance decision is reversed. Benefits are allowed provided claimant is otherwise eligible.

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Adrienne C. Williamson  
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Decision Dated and Mailed

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