

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**YASMIN M DIRIYE**  
Claimant

**APPEAL NO: 18A-UI-08498-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGRI STAR MEAT & POULTRY LLC**  
Employer

**OC: 06/17/18**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 19, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 30, 2018. The claimant participated in the hearing with CTS Language Link Interpreter Amina. Laura Roney, Payroll/Human Resources Assistant, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

**ISSUE:**

The issues are whether the claimant's appeal is timely and whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on July 19, 2018, with a due date of July 30, 2018, listed. The claimant did not receive the decision because the Department used an incorrect address for her. Once the claimant became aware there was a decision when she spoke to the Department she filed an appeal August 10, 2018. Because the claimant filed an appeal as soon as she was aware of the decision denying her benefits, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time production laborer for Agri Star Meat & Poultry, LLC from May 17, 2017 to June 21, 2018. She was discharged for fighting with a co-worker.

On June 18, 2018, around 11:30 a.m. the claimant and Johari Saleem had a verbal altercation which became physical when the claimant slapped Ms. Saleem across the face. That act was witnessed by Quality Assurance employee Yesenia Cordaro-Mendoza who went to the Poultry Office to report the fight. Foreman Joe Aguirre went to where the claimant and Ms. Saleem were still engaged in a physical altercation and observed both had their hands on each other with the claimant grabbing Ms. Saleem by the throat and Ms. Saleem grabbing the claimant by

the frock. Both women were hitting each other with their other hand. Mr. Aguirre separated the two employees and they were taken to the office. Human Resources interviewed the claimant, Ms. Saleem, Ms. Cordaro-Mendoza and Mr. Aguirre and directed each to write a statement. The claimant was suspended pending further investigation. After reviewing the employer's policy which states the employer has a zero tolerance for employees putting their hands on each other which results in immediate termination, the employer notified the claimant she was being discharged for fighting on the job.

## **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 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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from

receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant engaged in a physical altercation with Ms. Saleem in violation of the employer's policy. The claimant initiated the fight by slapping Ms. Saleem in the face, which was stated in both Ms. Saleem's statement as well as Ms. Cordaro-Mendoza's statement. The claimant also grabbed Ms. Saleem by the throat and was trying to hit her when Mr. Aguirre went to that area in response to Ms. Cordaro-Mendoza reporting the situation to him.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The July 19, 2018, reference 01, decision is affirmed. The claimant's appeal is timely. 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn