

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA TAPIA
Claimant

APPEAL NO: 14A-UI-09766-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 08/31/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 17, 2014 (reference 01) determination that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the October 28 and November 24 hearings with her attorneys Courtney Thomas-Dusing and Lorraine Gaynor. Michele Warnock, Attorney at Law, represented the employer. Nikki Bruno, Kathy Turelson, and Brian Ralston appeared on the employer's behalf. Rafel Geronimo interpreted the hearings. During the hearings, Employer Exhibits A, B, D, E and F were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in December 2007. The claimant worked as a blender-operator the last four years of her employment. A blender-operator works with another employee who is supposed to bring product to the blender-operator. The blender-operator's partner reads and follows a batch sheet that indicates what ingredients are needed and what order to load the ingredients. The employer considers a blender-operator's job a very important job when mixing product for customers and required a blender-operator to scan all tickets of ingredients that go into a batch. Documentation is a crucial part of a blender-operator's job. The blender-operator must scan each ticket to make sure the right product goes into the equipment to make the correct end product (Employer Exhibit D).

The employer has yearly training for blender-operators to explain the importance of scanning. The claimant most recently this training in March 2014 (Employer Exhibit B). The training is done both in English and Spanish. The training specially informs blender-operators they cannot dump product into the blender without first scanning the ticket. Blender-operators are warned they can be terminated if they do not scan (Employer Exhibits E and F).

The employer tracks the scanning of all tickets in a batch. The accounting department personnel verify each product is scanned before it is put into a batch. If an ingredient is not scanned, the blender-operator is told about this problem.

The first time the employer noticed a problem was on December 18, 2013. The claimant received a counseling for this scanning error (Employer Exhibit A – WLF24). The claimant used the batch order for tank #6 for tank #10.

On July 30 the employer talked to the claimant about two issues that occurred on July 28. The claimant made a mistake on July 28 when she worked with M, who was qualified to do several jobs. The claimant did not usually work with M. On July 28 the claimant notified her supervisor that M was not helping her. Although the supervisor indicated he would talk to M, the claimant did not notice that this occurred.

The employer gave the claimant her counseling for one of the issues on July 28. The employer gave the claimant a three-day suspension for failing to document on a July 28 batch sheet and scan tickets for 593 pounds of a spice she had put into the blender on July 28. The claimant did not realize she made this error until the employer discovered this error by reconciling daily work orders (Employer Exhibit A – WLF15). The employer had to hold this product. The employer reminded the claimant to slow down and to ask for help when she needed it. The claimant understood her job was in jeopardy after she received the three-day suspension.

On August 24 the claimant again worked with M. On this day she worked as the blender-operator and did not scan tickets for meat she put into the batch. On this day, the claimant and her partner were responsible for making three batches instead of the typical six batches. The employer expects an employee to report problems when a co-worker is not doing a job to a supervisor. Although M was not helping the claimant, she did not report this to the employer because she concluded nothing had been done when she reported problems with M on July 28. The claimant did not realize she had not scanned tickets for the meat she put into the blender. She did not know she made a mistake until the employer talked to her on August 30, 2014. Again, the employer discovered this error through accounting and reconciling the daily work orders.

On September 2 the employer discharged the claimant for progressive job performance issues or more specifically for failing to again scan tickets for product that were put into a blender.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The employer discharged the claimant for making two mistakes, July 25 and August 24, in a critical step of the employer's production. The claimant understood the importance of scanning tickets before putting product into a blender. The claimant understood her job was in jeopardy on July 30 when she was suspended for three days for failing to scan tickets of product put into the blender. On August 24 the claimant was again negligent, but she did not intentionally fail to scan tickets of product that were put into the blender. While the evidence support the fact this was an extremely important part of the blender-operator's job, the facts do not establish that the claimant intentionally failed to scan tickets or that she was so negligent or careless to such a degree of recurrence that she substantially disregarded the employer's interests. The claimant failed to properly scan tickets the two times she worked with M, who she had problems working with. For unemployment insurance purposes, the claimant did not commit work-connected misconduct. As of August 31, 2014 the claimant is qualified to receive benefits.

DECISION:

The representative's September 17, 2014 (reference 01) determination is reversed. The employer discharged the claimant of business reasons, but the claimant did not commit work-connected misconduct. As of August 31, 2014 the claimant tis qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

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