

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA L ORTEGA

Claimant

APPEAL NO. 11A-UI-15107-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 10/16/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated November 10, 2011, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on December 19, 2011. The claimant participated. The employer participated by Nicki Bruno, human resource supervisor; Kathy Truelson, HR manager; and Walter Debock, operations manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Maria Ortega was employed by West Liberty Foods from July 30, 2001, until October 19, 2011, when she was discharged for misappropriation of company product. Ms. Ortega worked as a full-time production worker and was paid by the hour.

The claimant was discharged after she admitted misappropriating and consuming company food stuffs in violation of company policy. During an investigation, Ms. Ortega admitted stealing company honey, hiding it in a glove, and consuming it in a production area. Consuming company product, taking product without authorization, and consuming it anywhere but a break area is a violation of the company's strict rules and subjects an employee to discharge on the first offense. The claimant was aware of the company rules and had received a handbook.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

The evidence in the record establishes the claimant knew or should have known that consuming company product without authorization would be considered misappropriation and a violation of the company's policies. The claimant also knew or should have known that consuming food stuffs in a non-break area was a violation of the company's strict contamination policies, which would subject an employee to discharge on the first offense. The claimant was discharged when she admitted to violating these rules. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated November 10, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw