

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROLINA E IBANEZ GALICIA
Claimant

APPEAL NO: 11A-UI-09902-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 06/12/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 26, 2011 determination (reference 01) 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 in the hearing. Jim Hook, a human resource manager, appeared on the employer's behalf. Ninfa Redmond interpreted the hearing. 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 November 2007. On January 11, 2011, the employer gave the claimant information that she needed to renew her authorization to work permit in the United States. The claimant's authorization to work permit expired on April 3, 2011. The claimant submitted the necessary paperwork to immigration officials by early February. The claimant has previously submitted her paperwork to renew her work authorization permit in February and had no problem getting her authorization to work permit renewed before the other one expired.

In March 2011, the claimant received information that the immigration office needed her fingerprints again. The claimant contacted the immigration office to make an appointment to get her fingerprints taken. Immigration officials scheduled the claimant to get her fingerprints taken at their office on April 7.

When the claimant could not provide her authorization to work permit on April 3, the employer gave her 30 days to submit a current authorization to work permit. If she did not have a current authorization permit to work by May 3, she would not have a job. The employer could not allow the claimant to work after April 11 because she did not have authorization to work in the United States.

The claimant did not receive her authorization to work permit until June 16, 2011. By this date, the employer no longer considered her an employee. To work again for the employer, the claimant has to complete an employment application and be hired as a new employee. The employer ended the claimant's employment in early May because she had not returned to work with her authorization to work permit.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for ending the claimant's employment. The employer cannot allow unauthorized individuals to work for them. Even though the employer was justified in ending the claimant's employment when she was unable to get her authorization to work permit renewed before May 3, the claimant timely submitted the necessary paperwork to immigration officials. Even after she learned immigration officials needed to take her fingerprints again, the claimant made an appointment for this to be done. The claimant took reasonable steps to get her authorization to work permit renewed. The date immigration officials renewed her authorization to work permit was beyond the claimant's control. The claimant did not commit work-connected misconduct. Therefore, as of June 12, 2011, she is qualified to receive benefits.

DECISION:

The representative's July 26, 2011 determination (reference 01) is reversed. Even though the employer had justifiable reasons for ending the claimant's employment, she did not commit work-connected misconduct. As of June 12, 2011, the claimant is 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

dlw/pjs