

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIBEL ESPARZA
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 19A-UI-09855-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/17/19
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On December 13, 2019, the claimant filed an appeal from the December 9, 2019, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 10, 2020. Claimant participated personally through a Spanish interpreter with CTS Language Link. Claimant's husband, Cesar Esparza, observed. Employer did not answer at the telephone number it provided for the hearing and did not participate.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on March 11, 2000. Claimant last worked as a full-time lead person. Claimant was separated from employment on November 14, 2019, when she was terminated.

Employer has a policy prohibiting use of cell phones on the production floor. Claimant was aware of the policy.

In April 2019, employer disciplined claimant for checking her phone while working on the production floor.

In July or August 2019, another co-worker was terminated for sending a text message while on the production floor. At that time, claimant's supervisor held a meeting with all of the employees in the department. The supervisor stated that he understood the employees were mothers and had emergencies arise with their children from time to time. The supervisor said employees could answer an emergency phone call if they went to the warehouse to do so.

On November 11, 2019, claimant's son called her while she was at work to let her know he needed someone to supervise her six-year old daughter. Claimant went to the warehouse to take the phone call. The phone call lasted under five minutes. A different supervisor observed claimant talking on her phone in the warehouse and referred the matter to the human resource department.

Although claimant explained what her supervisor had told the employees at the meeting, employer terminated claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 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 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.

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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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). Misconduct justifying termination of an employee and misconduct

warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant was aware of employer's policy prohibiting use of a cell phone on the production floor. But claimant did not violate that policy. Instead, she utilized the exception offered by her supervisor by taking an emergency phone call in the warehouse. Employer has not demonstrated why claimant was unreasonable in using that exception. Employer failed to establish claimant was terminated for misconduct.

DECISION:

The December 9, 2019, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

January 13, 2020
Decision Dated and Mailed

cal/scn