

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER MILLER
Claimant

APPEAL NO: 16A-UI-09684-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HORMEL FOODS CORPORATION
Employer

OC: 07/24/16
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 25, 2016, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 22, 2016. The claimant participated in the hearing. Frank Valasquez, Human Resources Manager; Melissa Silva, Claims Specialist; and Christina Grill, Employer's Representative; participated in the hearing on behalf of the employer.

ISSUE:

The issue is 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: The claimant was employed as a full-time boxer for Hormel Foods Corporation from September 17, 2015 to February 22, 2016. She was discharged for a no-call no-show absence because she was incarcerated while on a last chance agreement.

The claimant was placed on a last chance agreement February 1, 2016, after being terminated January 15, 2016, for throwing plastic hole punches at another employee over open pepperoni product packages. The terms of the last chance agreement included following the attendance policy and not engaging in any misconduct such as falsification, horseplay and deliberate misconduct. The agreement also stated the claimant would remain at the two strike level for one year.

The employer's attendance policy starts employees with 11 points which can be used over a continuous year. When an employee gets down to six and four points she receives a written warning and at two points she receives a written warning and suspension. The claimant received her six point warning November 13, 2015 and her four point warning December 15, 2015.

The claimant called in and reported she was ill February 18, 2016. She was a no-call no-show February 19 and 20, 2016, because she was in jail for an OWI. She called the employer from jail February 20, 2016, and was told she needed to talk to Human Resources Manager Frank Velasquez before she returned to work. She met with Mr. Velasquez and her employment was terminated.

The claimant has not received unemployment insurance benefits since her separation from this employer because she is disqualified due to another separation.

The employer personally participated in the fact-finding interview through the statements of Claims Specialist Melissa Silva. The employer also submitted written documentation prior to the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code § 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.

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 was on a last chance agreement which required her to follow the employer's attendance policy. The claimant used her remaining attendance point with her properly reported illness February 18, 2016. That absence was followed by at least one no-call no-show absence February 19, 2016, because the claimant was in jail. The claimant knew or should have known that an unexcused absence would violate her last chance agreement and result in termination of her employment.

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 August 25, 2016, reference 03, decision is reversed. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs