

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARIA B LAGOS**  
Claimant

**SMITHFIELD FARMLAND CORP**  
Employer

**APPEAL 15A-UI-11368-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/20/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 7, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on October 27, 2015. Claimant participated personally and through interpreter, Ike Rocha. Employer participated through human resource manager, Becky Jacobsen.

**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 was employed full-time as a production worker from May 26, 2005, and was separated from employment on August 14, 2015, when she was terminated.

On Sunday, August 9, 2015, an employee's lunch went missing in the workplace. On Monday, August 10, 2015, the employee reported the incident to management. The employee explained that the previous day he brought a lunch box and a plastic bag containing bread and a burrito for lunch. The plastic bag was tied to the lunch box. The employee drew a picture of the location of his lunch and informed management there were no other lunches near his. The employee gave a time frame when the lunch went missing. Employer reviewed the surveillance tape and saw the lunch described by the employee. The video showed claimant enter the room when it was not break time and the room was empty, untie the bag from the lunchbox, hide the bag in her freezer coat, and walk away. Employer showed claimant the video. Claimant did not deny it was her. Instead, claimant explained that her co-worker, Maria Galagos, brought her bread that day. Claimant stated she did not bring lunch that day because Galagos told her the day the before, Saturday, that she would bring her food the next day.

Employer interviewed Galagos. Galagos stated she did not tell claimant on Saturday that she would bring her food. However, Galagos stated that she did tell claimant on Sunday that she brought her bread and that it was by the entrance. Employer does not have surveillance cameras at the entrance.

Employer concluded that claimant stole the lunch in question and terminated her employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to

substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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 does not constitute 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).

Claimant denies taking her co-worker's lunch. Instead, claimant asserts she took a bag of bread that her friend brought to work for her, put it inside her coat, and brought the bag to her locker. Claimant's story does not make sense for several reasons. First, claimant's friend, Galagos, told employer she brought the bread for claimant and set it at the entrance. However, employer does not have surveillance cameras at the entrance. Instead, claimant took a bag from a place that was under surveillance and is also the exact place and exactly described by the employee whose lunch was stolen. Second, claimant admits hiding the bag in her freezer coat. If claimant was authorized to take the bag, why would she have put it inside her coat? If claimant was authorized to take the bag, she would have simply carried the bag to her locker. There would have been no reason to put the bag inside of her coat.

In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). Based on the evidence and common sense, I conclude claimant stole her co-worker's lunch. Claimant's conduct was in deliberate disregard of her employer's interests. This is misconduct without specific policy violation or prior warning.

**DECISION:**

The October 7, 2015, (reference 01) unemployment insurance decision is affirmed. 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.

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Decision Dated and Mailed

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