

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKY HOYT
Claimant

APPEAL NO: 13A-UI-03041-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 02/10/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 8, 2013, reference 01, 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 April 11, 2013, and continued on May 14, 2013. The claimant participated in the hearing with friend/witness Brian Walter. Monica Dyar, Human Resources Supervisor; Patrice Trammell, Production Supervisor; and Mark Eads, Operations Manager; participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

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 slicer technician for West Liberty Foods from July 5, 2011 to February 4, 2013. Her employment was terminated February 4, 2013, because she was accused of telling Supervisor Patrice Trammell, "I need you to shut the fuck up," after Ms. Trammell told the claimant she needed her to do hourly weight checks of product January 30, 2013. The claimant denies making that statement and Rafael, the other employee who was in the room with the two women, did not hear the claimant make that statement but could not hear what they were saying (Employer's Exhibit Five). He did say that based upon his reading of the claimant's body language she appeared upset when talking to Ms. Trammell.

The situation began when Ms. Trammell told the claimant her line would be covered by Aosue Maldonado while she was at break. The claimant said she was uncomfortable with Mr. Maldonado working her line because he previously threatened and harassed her approximately three weeks earlier when some of her molders were sent to Mr. Maldonado's line and he told the molders to "get the fuck off his line" in Spanish. The molders were Hispanic and understood his comment. Ms. Trammell was consulted about the situation and after meeting in her office the claimant and Mr. Maldonado left to suit up and return to work and while they were dressing Mr. Maldonado began swearing at the claimant and she asked him to watch his

language and he stated she was just another “fucking slice tech” and said he would meet her in the parking lot after work to show her how it was done. The claimant reported the incident to Ms. Trammell and was directed to notify the human resources department, which she did. Mr. Maldonado was disciplined, although the claimant was not aware of that because personnel/disciplinary action decisions are confidential. On another date after that situation Mr. Maldonado ran the claimant’s line and it was a “mess.” The line went down and Mr. Maldonado told the claimant it was not his line and he did not care what happened before walking out of the room. For the reasons stated above the claimant was not comfortable having Mr. Maldonado running her line January 30, 2013.

Ms. Trammell asked the claimant if she was doing weight checks January 30, 2013, and the claimant replied that she and Raphael were taking turns. Ms. Trammell asked where the weight check form was and the claimant indicated there were no forms when she went in the office to pick up the forms and Ms. Trammell stated she printed them the day before. The claimant said she would pick up the forms on her way back from break. The claimant and Ms. Trammell were on the verge of an argument when Ms. Trammell stated she needed the weight checks to be completed every hour and that is when the claimant is alleged to have said, “I need you to shut the fuck up,” a charge the claimant denies. The claimant’s employment was terminated for insubordination February 4, 2013 (Employer’s Exhibits One through Five).

On March 1, 2013, the claimant and her friend Brian Walter were in town at a local restaurant and ran into Greg Connolly, Slice Technician Coordinator. Mr. Connolly was a member of management but was not directly involved in the claimant’s termination from employment. He told the claimant and Mr. Walter that the real reason the claimant was discharged was because she was on intermittent Family and Medical Leave (FML). The claimant had been using her FMLA since July 15, 2010, and was off work four to six days per month because she was diagnosed with fibromyalgia and experienced flare ups of chronic pain and muscle stiffness and had appointments and therapies related to her illness. The employer denied that the claimant’s termination of employment had anything to do with her use of FML.

On March 29, 2012, the claimant received a written warning after the employer was made aware the claimant sometimes yelled and swore (Employer’s Exhibit One). Her words were not directed at anyone but rather her anger and frustration at work would surface. The employer stated employees were expected to be “courteous and respectful at all times” and because the claimant was in a leadership position it was even more imperative that she “remain professional and respectful at all times regardless of the situation” (Employer’s Exhibit One).

REASONING AND CONCLUSIONS OF LAW:

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

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 proving disqualifying misconduct. 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 substantial and 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). While the employer maintains the claimant swore at Ms. Trammell January 30, 2013, the claimant denied making the comment to Ms. Trammell. Mr. Connelly also told the claimant and Mr. Walter that Ms. Trammell was only 60 percent sure the claimant made the statement and the real reason for her termination was her use of intermittent FML. The claimant's testimony was credible and although she had more reason to be dishonest than Ms. Trammell, the claimant was adamant that she did not make the statement in question to Ms. Trammell and Ms. Trammell, who was also credible, was only 60 percent sure the claimant made the comment as the area was quite loud with the machines running. Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The March 8, 2013, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css