

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL D LORENZ
Claimant

APPEAL NO. 13A-UI-00373-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON RETAIL DELI MEATS INC
Employer

OC: 12/09/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Carol Lorenz (claimant) appealed a representative's January 4, 2013 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Tyson Retail Deli Meats (employer) for repeated tardiness in reporting for work after having been warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 13, 2013. The claimant was represented by Hannah Vellinga, Attorney at Law, and participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 16, 1985, as a full-time hazard analysis critical control point technician. The employer did not provide the claimant with a handbook. The claimant understood that she was supposed to notify her supervisor 30 minutes prior to the start of her shift if she were going to be absent. The claimant's shift started at 9:00 a.m. In March and October 2012, the employer issued the claimant two written warnings for tardiness. The employer notified the claimant that further infractions could result in termination from employment.

On December 6, 2012, the claimant was getting ready to leave her home for work at approximately 8:45 a.m. and she stubbed her toe. She thought she broke her toe but did not. She was able to drive the eight minutes to work and walk to the time clock but punched in two minutes late. She immediately showed her supervisor her toe and explained the situation. On December 7, 2012, the employer terminated the claimant for repeated tardiness.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, did not provide sufficient evidence of job-related misconduct with regard to the final incident. The claimant was two minutes late because of a medical issue. That issue occurred right at the time she was supposed to be leaving for work. The claimant's tardiness was not intentional. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 4, 2013 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs