

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KELLIE L KENT
Claimant

APPEAL 15A-UI-07514-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHEARERS FOOD BURLINGTON LLC
Employer

**OC: 06/07/15
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 22, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on July 31, 2015. The claimant participated personally. The employer participated through Melissa Stiffler, human resources generalist. Claimant Exhibit A and Employer Exhibit One.

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: The claimant was employed full-time as a packer/general helper and was separated from employment on June 8, 2015, when she was discharged.

The employer had a policy prohibiting the throwing of food in the work place, and considered it to be a safety violation. The claimant was made aware of the employer's policies and on the day of the final incident, the claimant's manager had a staff meeting discussing the employer's policy of throwing food at people. The meeting was directed to all staff and not the claimant.

The final incident occurred on May 31, 2015, when it was reported by co-workers that the claimant had thrown scrap cookies at a co-worker. The claimant testified she was throwing the scraps across the line as she had throughout her employment, and unintentionally had contact with the backside of her co-worker, Vicki Miller. Ms. Miller did not say anything to the claimant or acknowledge it, and the claimant thought nothing of the incident until she was suspended a few days after, and witness statements were gathered by the employer. The employer completed its investigation and subsequently discharged the claimant. She had no disciplinary history.

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 § 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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence does not establish that the claimant intentionally disregarded the employer's interests. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). The employer's witness, Ms. Stiffler, did not witness the final incident that triggered the separation. The employer produced the statements of several employees present during the final incident between the claimant and Ms. Miller. A review of the statements reflect that none indicated that the claimant intentionally or purposefully threw scraps of cookies at Ms. Miller. The claimant offered testimony under oath that she had performed her scrap throwing duties the same way since she had been on the line, and had no intent of making contact with Ms. Miller. Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer. The employer has not established a current or final act of misconduct, and, without

such, the history of other incidents need not be examined. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. Accordingly, benefits are allowed.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

DECISION:

The June 22, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs