

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JESSICA L FARLOW
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OSCEOLA IA 50213

OSCEOLA FOODS CORPORATION
c/o JON-JAY ASSOCIATES
PO BOX 182523
COLUMBUS OH 43218-2523

Appeal Number: 04A-UI-05101-RT
OC: 04-18-04 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Jessica L. Farlow, filed a timely appeal from an unemployment insurance decision dated April 30, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on May 25, 2004 with the claimant participating. Judy Callahan, Personnel Manager, and Ron Meyer, Team Leader, participated in the hearing for the employer, Osceola Foods Corporation. Gary Sample, Personnel Coordinator, was available to testify for the employer but not called because his testimony would have been repetitive and was unnecessary. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time production employee from November 12, 2001 until she was discharged on April 13, 2004. The claimant was discharged for two reasons, throwing meat or globs of bone dust against the wall in violation of the employer's safety and sanitation rules and for attendance. On April 8, 2004, the claimant threw a glob of bone dust onto the employer's wall sticking to the wall. This was a violation of the employer's sanitation policies. The employer is a meat cutting operation and cuts meat for human consumption. The claimant threw the glob of bone dust against the wall to prove a point. The claimant believed that the employer's sanitation rules were "crap." Just a couple of weeks earlier on or about March 20, 2004, the claimant had done the same thing and received a verbal warning from Ron Meyer, Team Leader. The claimant conceded that she had thrown the bone dust globs on both occasions.

Concerning the claimant's attendance, the claimant was tardy on April 12 or April 13, 2004. Although her entire team had been told to start early at 6:30 a.m., the claimant believed it was only for a couple of weeks and came back in at her regular time at 7:00 a.m. The claimant had been arriving at 6:30 a.m. All of the other claimant's coworkers came in at 6:30 a.m. on that day as well. The claimant was already supposed to see Judy Callahan, Personnel Manager, on that day because of the throwing of the glob of bone dust. The claimant met with Ms. Callahan and the next day she was discharged for both attendance and the throwing of the globs of bone dust. The claimant would have been discharged in any event for the throwing of the bone dust whether or not she had been tardy. The claimant also had other tardies on January 8, 2004, January 7, 2004, December 22, 2003, and September 12, 2003. These tardies were either because the claimant was simply late or she did not recall why or because of transportation. The claimant was also absent on October 6, 2003 but only for personal reasons. The claimant did leave work early on December 12, 2003 with the employer's approval and was absent because of the illness of her child on March 31, 2004. These were properly reported or approved by the employer. The claimant received numerous warnings for her attendance as follows: a last-chance agreement on April 1, 2004; a second notice of discipline and suspension on January 8, 2004; a first notice of discipline on December 31, 2003; a written warning on December 18, 2003; and a verbal warning on October 20, 2003.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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, (7) 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Excessive unexcused absenteeism is disqualifying misconduct and includes tardies and necessarily requires the consideration of past acts and warnings. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct, including excessive unexcused absenteeism. The employer's witnesses credibly testified that the claimant was discharged for two reasons; throwing meat or globs of bone dust against the employer's wall in violation of the employer's sanitation and safety policies and her attendance. Concerning the throwing of the meat or globs of bone dust, the claimant conceded that she did so on two occasions. The first on or about March 20, 2004 when she got a verbal warning and the second on April 8, 2004 which resulted in her discharge. The claimant readily agreed to doing so on both occasions and stated that she did so to prove a point concerning sanitation. The claimant testified that she believed the employer's sanitation rules were "crap" but conceded that throwing globs of bone dust on the wall was not sanitary. The claimant sought to defend herself by stating that she was not the only one that did this. The administrative law judge does not believe that this is an excuse. The employer provides meat cutting operations of meat for human consumption and has safety and sanitation rules and the claimant clearly violated them deliberately on two occasions, the second occasion, even after being given a warning for the first occasion. The claimant seemed most cavalier about the employer's rules of sanitation. The administrative law judge sees absolutely no point to be proved by the claimant's throwing of the bone dust onto the wall. Accordingly, the

administrative law judge concludes that the claimant's acts in throwing the bone dust constitute a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of the employer's interest and, at the very least, are carelessness or negligence in such a degree of recurrence as to manifest equal culpability, wrongful intent or evil design and are disqualifying misconduct.

Concerning the claimant's attendance, the administrative law judge concludes that claimant's tardies as set out in the findings of fact and the absence on October 6, 2003 were not for reasonable cause and not properly reported and were excessive unexcused absenteeism. Concerning the tardy on April 12 or April 13, 2004, the claimant claimed that she believed that she was to start back at work at 7:00 a.m. instead of the 6:30 a.m. start time that she had been working for several weeks. The claimant's testimony is simply not credible. The claimant did not inquire as to when she should start on the day in question and all of the other coworkers on her team came at the 6:30 a.m. time. The claimant no doubt was trying to prove another "point." The claimant testified that two other tardies were because of transportation and one tardy she could not remember and one was because she was simply late. None were properly reported. The administrative law judge concludes that claimant's tardies were not for reasonable cause and not properly reported and were excessive unexcused absenteeism and disqualifying misconduct.

In summary, and for the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of April 30, 2004, reference 01, is affirmed. The claimant, Jessica L. Farlow, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits.

tjc/b