

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

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CURLY'S FOODS
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Appeal Number: 06A-UI-07505-DT
OC: 07/02/06 R: 01
Claimant: Respondent (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

STATEMENT OF THE CASE:

Curly's Foods (employer) appealed a representative's July 21, 2006 decision (reference 01) that concluded Megan L. George (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 14, 2006. The claimant participated in the hearing. Kathy Peterson appeared on the employer's behalf. One other witness, Betty Lopez, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 3, 2006. She worked full time as a general laborer in the employer's further meat processing facility. Her last day of work was June 12, 2006. The employer discharged her on that date. The reason asserted for the discharge was falsification of job application documentation.

When the claimant made her application for employment, she was also required to complete a medical history questionnaire. The form described the type of work that would be involved, including repetitive use of hands, arms and shoulders, and asked several questions, including whether there was any reason why working under those conditions would be difficult. The claimant answered "no." Another question was whether she had any physical limitations that could affect her ability to work under the specified conditions. The claimant answered "no." A third question was whether the claimant had seen any medical provider within the past five years for any pain or injury to her hands, arms, shoulders, etc. Again the claimant answered "no."

In fact, ten years ago the claimant had been diagnosed with arthritis in her right hand. She had no specific restrictions for the condition, and had not had any recent confirmation of the condition. When she completed the form, she told the human resources representative who was assisting her about her condition and asked how she should answer the three questions. The representative said that since there was no recent diagnosis or current restriction, she should answer "no" and then let the employer's nurse know about the prior diagnosis. The claimant had also actually had a work injury to her left hand in 2005 for which she had seen a doctor and who told her that she had tendonitis in that hand; however, she had no work restrictions with that hand, either. The claimant asserted that she neglected to report that doctor's visit as she did not think it was serious, she did not anticipate using her left hand for work and she did not wish to jeopardize the possibility of becoming employed with the employer.

In early June the claimant had pain in her right hand and was sent to the nurse. At that point the nurse relayed to Ms. Peterson, the human resources manager, that the claimant had indicated she had a 10-year-old diagnosis of arthritis in the right hand. Ms. Peterson reviewed the claimant's medical history form and saw that this had not been included. As a result, she discharged the claimant. Had the claimant properly reported the diagnoses with her hands, it would not have disqualified her from employment with the employer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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.

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.

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).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the claimant's failure to provide the complete information required on the medical history form. First, the claimant had informed the employer's human resources of at least one of the conditions, which was to the hand that was subsequently injured, and it was the employer's representative who had instructed the claimant to answer "no." Under that circumstance, the claimant's response cannot later be used to disqualify her from benefits. Further, false statements on employment application forms do not automatically result in disqualification from unemployment insurance benefits. The false statement must endanger the health, safety or morals of the applicant or others or result in exposing the employer to legal liabilities or penalties or result in placing the employer in jeopardy. The Iowa court has ruled that a misrepresentation on a job application must be materially related to job performance to disqualify a claimant from receiving unemployment insurance benefits. Larson v. Employment Appeal Board, 474 N.W.2d 570 (Iowa 1991). Although the court did not define materiality, it cited Independent School District v. Hanson, 412 N.W.2d 320 (Minn. App. 1987), which stated that a misrepresentation is not material if a truthful answer would not have prevented the person from being hired. Here, a truthful answer would not have prevented the claimant from being hired. Therefore, the administrative law judge concludes that the claimant's act of falsification on the medical history portion of the application was not misconduct and, as a consequence, she is not disqualified for unemployment insurance benefits.

DECISION:

The representative's July 21, 2006 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/pjs