

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE T MCGREGORY
Claimant

APPEAL NO. 12A-UI-10132-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 07/29/12
Claimant: Appellant (5)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated August 17, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on September 18, 2012. The claimant participated. The employer participated by Mr. Jim Hook, human resource manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Nicole McGregory was employed by Tyson Fresh Meats from January 17, 2011, until August 1, 2012, when she was discharged from employment. Ms. McGregory was employed as a full-time production worker and was paid by the hour. Her immediate supervisor was Tonya Evans.

Ms. McGregory was discharged after she walked off the job without authorization prior to the end of the work shift on July 30, 2012. On July 27, 2012, all department employees were informed that mandatory ten-hour workdays were beginning and the employees were expected to work the ten-hour shifts. The company also posted the ten-hour work schedules.

After completing eight hours of work on July 30, 2012, Ms. McGregory informed her supervisor that she was leaving. Permission to leave was denied because of the mandatory ten-hour work requirement that had been imposed by the employer on July 27, 2012. Although permission to leave was denied, Ms. McGregory nonetheless left work. Under the company's established policies, employees who leave work without authorization are subject to discharge on the first offense. Employees are told of this rule during orientation. Although Ms. McGregory was given an opportunity to provide documentation supporting her need to leave work early on July 30, 2012, she did not provide that documentation to the employer and was discharged.

It is the claimant's position that she needed to meet with her landlord that afternoon because she was facing eviction for non-payment of rent. Ms. Gregory maintains that she did not receive any documentation until approximately two months after the July 30, 2012, meeting with her landlord.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

No aspect of the contract of employment is more basic than the right of the employer to expect employees to appear for work on the hour and day agreed upon and to perform their duties as scheduled. In this matter, the evidence establishes Ms. Gregory was aware that leaving her work without authorization could result in her termination from employment on the first offense.

Although the claimant maintains that she had a mandatory meeting with her landlord on the afternoon of July 30, 2012, the claimant did not inform her manager or supervisor in advance of her need to be off work on July 30, 2012. At the end of her eight-hour work shift, the claimant informed her supervisor that she was leaving and left even though permission to leave before the ten-hour work shift was completed had been denied.

Although the claimant was given a reasonable opportunity by the employer to provide supporting documentation of her need to leave work early, she did not provide the documentation to the employer and was discharged from employment. Ms. McGregory had the option of immediately informing management of her meeting with her landlord as soon as she was given notice of it but did not do so. The claimant waited until the end of the normal eight-hour work shift, allowing the employer no time to make alternative arrangements to cover her work.

For the reasons stated herein, the administrative law judge concludes the employer has sustained its burden of proof in establishing the claimant was discharged from her employment under disqualifying conditions. Benefits are withheld.

DECISION:

The representative's decision dated August 17, 2012, reference 01, is affirmed as modified. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw