IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

SUDIANA ANGE K Claimant **TYSON FRESH MEATS INC** Employer	**APPEAL 21A-UI-15704-DH-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/11/21** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 9, 2021, (reference 01) unemployment insurance decision that denied benefits based upon being discharged on April 12, 2021 for violation of a known company policy. The parties were properly notified of the hearing. A telephone hearing was held on September 2, 2021. The claimant, Ms. Sudiana, participated. French interpretation was provided by Ms. Jeanine with CTS, Account #9958, but within about thirty-five minutes into the call, the interpreter advised claimant was struggling with French, but did speak Lingala, which the interpreter spoke as well, The undersigned took notice that there was communication issues and authorized switching to Lingala in order to (1) proceed with the hearing and (2) ensure due process rights were protected in that claimant could more fully understand and participate utilizing Lingala versus French. The employer did not participate. Although Kris Rossiter was registered, no one answered the call, a voice message was left and no one called in during the hearing to request to participate.

ISSUE:

Was claimant's separation a layoff, discharge for misconduct or a voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having received the testimony and reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a person who utilized a knife from April of 2018, until this employment ended on April 12, 2021, when she was discharged for being out of her work area. The record shows claimant was reprimanded for unauthorized breaks on the following dates: April 8, 2021 (leading to termination), March 19, 2021, November 17, 2020, June 18, 2020, March 2, 2020, January 22, 2020, June 5, 2019, and April 23, 2019. There is a place for an interpreter to sign, and only the June 5, 2019 document is signed reflecting the use of an interpreter. Claimant does not speak, read, nor understand English. Claimant is unaware of any workplace policies and was not given a workplace policy. Leading up to April 8, 2021, claimant knew her supervisor was not happy that she needed to use the bathroom so on April 8,

2021, claimant asked a different, nearby supervisor for permission to use the bathroom, which was granted. When she returned, her supervisor told her to wait and see what happens. On April 12, claimant was directed to clean out her locker and anything belonging to Tyson, return and anything of hers to keep and come sign a paper. Claimant signed a paper and was told she was terminated. Claimant did not know her job was at risk. Claimant believes this is about having to use the bathroom as she has not had problems.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep’t of Job Serv.*, 364 N.W.2d 262 (Iowa

Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

Claimant was not provided any workplace policies, or if she did, they were not in a language she could understand. Claimant has one documented disciplinary action that utilized an interpreter (June 5, 2019). Employer failed to meet their burden of proof and accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

DECISION:

The July 9, 2021, (reference 01) unemployment insurance decision is REVERSED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Darrin T. Hamilton
Administrative Law Judge

September 10, 2021
Decision Dated and Mailed

dh/ol