

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SYLFISE DORMEUS**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 22A-UI-07199-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/06/22**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Overpayment of Benefits  
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the March 7, 2022 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits to the claimant based upon a discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on May 3, 2022, following due notice. The claimant participated personally. Franceline Cima participated as a witness on behalf of the claimant. Language Link provided language interpretation services to the claimant. The employer participated through witness Lydia Awinjah. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Was the claimant overpaid benefits?  
Is the employer's account chargeable due to participation in the fact-finding interview?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production worker beginning on August 19, 2019. Claimant was discharged from employment on February 5, 2022 for taking an unauthorized break. The employer has a written policy forbidding employees from taking breaks when they are not scheduled to do so. Claimant was given a warning on July 25, 2021 for taking an unauthorized break because she had to go to the bathroom when she was sick at work. Claimant was given a warning on August 24, 2021 when a co-worker reported that she was on her telephone during a bathroom break. Claimant was given a warning on December 7, 2021 when she was reported to be on her telephone during a bathroom break.

On February 4, 2022, it was alleged that the claimant was taking an unauthorized break and that incident led to her discharge from employment. Dupre Smith, one of the claimant's supervisors, reported that the claimant took an unauthorized break on February 4, 2022.

Claimant was never interviewed on February 4, 2022 or February 5, 2022 to determine whether she did in fact take an unauthorized break. Mr. Smith did not document the time or place of the unauthorized break and did not testify at the hearing. The claimant disputed the allegations that she took an unauthorized break on February 4, 2022. The employer did not provide any documentation regarding the discharge from employment or previous disciplines. No documentation regarding what the policy prohibited was introduced into evidence by the employer.

Claimant's administrative records establish that she has received unemployment insurance benefits of \$5,310.00 from February 6, 2022 through May 1, 2022. The employer did not participate in the fact-finding interview that occurred on March 4, 2022. The employer responded to the Notice of Claim in its Statement of Protest that the claimant was discharged for unsatisfactory work performance. No further documentation was provided with the Statement of Protest.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

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(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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.

Unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment.” *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982). The employer has the burden of proof in establishing disqualifying job misconduct. *Id.* at 11. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep’t of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

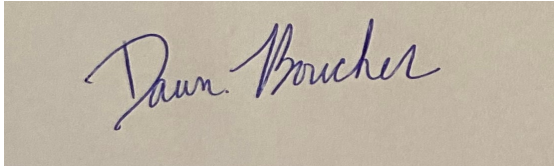
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* The administrative law judge finds the claimant’s testimony that she did not take an unauthorized break on February 4, 2022 to be credible.

The employer failed to establish that the claimant took an unauthorized break on February 4, 2022 and therefore has failed to meet its burden of proof to establish substantial job-related misconduct. As such, the separation from employment is not disqualifying. Benefits are

allowed, provided the claimant remains otherwise eligible. The issues of overpayment and chargeability due to fact-finding interview participation are moot.

**DECISION:**

The March 7, 2022 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason and the separation from employment is not disqualifying. Benefits are allowed, provided the claimant remains otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

May 4, 2022

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Decision Dated and Mailed

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