

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIELLE K BLOOMFIELD**  
Claimant

**APPEAL NO. 10A-UI-14754-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 08/22/10**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 26, 2010 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on December 16, 2010. Claimant participated. Employer participated through Jim Hook.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a production worker from November 30, 2009 and was separated from employment on March 26, 2010. On March 25, 2010, she was involved in a verbal and physical altercation in the employer's parking lot after work hours with coworker and claimant's aunt, Beatrice Ramos. Elena Reeder investigated and found that Ramos admitted to slapping claimant after claimant allegedly spat in her face. There were no other witnesses other than Ramos' boyfriend, Robert Castillo. Castillo accused claimant of kicking Ramos' car, so she waited to confront claimant after her ride, Brion Martin, went back into the plant to get his keys. Ramos had threatened her job since claimant began working there. Claimant did not spit on Ramos and did not swing at her but tried to leave, but her back was to a car. She was eventually able to get away and reported the issue to security. Reeder did not interview Martin or Castillo.

**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 § 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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. IDHS*, 461 N.W.2d 603, 607 (Iowa App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument, stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to

fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. EAB*, 529 N.W.2d 640 (Iowa App. 1995).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was that she had allegedly spat at Ramos. Because employer did not interview anyone other than the claimant and Ramos, credibility must be determined by individual credibility of the claimant and Ramos' statement to the employer. Since Ramos had threatened claimant's job before and instigated the confrontation, the veracity of her hearsay statement to the employer is questionable. Given these circumstances and that claimant reported the incident immediately after she was able to get away from Ramos, her denial of having spat at Ramos is credible. Employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

**DECISION:**

The October 26, 2010 (reference 02) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. The benefits withheld shall be paid, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw