

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODY M ROBBINS

Claimant

APPEAL NO: 07A-UI-01458-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

**OC: 01/07/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (employer) appealed a representative's January 30, 2007 decision (reference 01) that concluded Jody M. Robbins (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 7, 2007. The claimant participated in the hearing. Brian Ulin, a union representative, represented the claimant. Paige Merrill, a co-worker, testified on the claimant's behalf and Cyndi Kirkendall was available to testify for the claimant. Katie Diercks, an assistant human resource manager, and Beth Gravatt, the claimant's former supervisor appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 2, 2002. The claimant worked full time. Most recently the claimant worked as a scale operator in the blend room. Since about October 2006, Gravatt had to contend with conflicts between the claimant and S.B. The claimant and S.B. had been friends outside of work but since October they did not get along at work. The claimant complained that S.B. harassed the claimant, and S.B. complained that the claimant harassed her.

Problems between the two women became so frequent that Gravatt told them they could not talk to one another. Gravatt tried to keep the two women as far apart as possible. Problems continued. At various times, the claimant went to the employer's human resource manager and asked the employer to move the claimant to any other job because of continued problems between the claimant and S.B. The claimant also tried to work in another department away

from S.B. by bidding on other jobs. The claimant was not successful on the jobs she bid to transfer to.

On December 22, 2006, the employer gave both the claimant and S.B. a final written warning for repeatedly failing to get along or for harassing each other. On this day the employer also gave the claimant a copy of the employer's harassment policy. (Employer Exhibit One.) The claimant understood that if she had further problems with S.B. she was to report the problem to Gravatt.

On January 9, 2007, the claimant was doing her job when S.B. walked by. As S.B. walked by the claimant heard her say, "F_____ B_____!" The claimant did not say anything to S.B. but she was upset by S.B.'s comments. The claimant continued with her work and went to the combos. As Gravatt walked through the area, she noticed the claimant was upset. While the claimant was at the combos she made comments to herself that she was tired of this f_____ B.S. After Gravatt asked the claimant what was the problem, the claimant made the same comment and pointed toward S.B. Gravatt became frustrated because of the repeated problems between the claimant and S.B. Gravatt left the area. The claimant worked 20 minutes before the employer called her to the front office.

Gravatt considered the claimant's comments in conjunction with the fact she pointed toward S.B. as a violation of the employer's harassment policy. Since the claimant was on a final warning, Gravatt discharged the claimant on January 9, 2007, for violating the employer's harassment policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant for business reasons. On January 9, 2007, the claimant was upset after S.B. made a derogatory comment to her. The evidence does not establish that the claimant said anything directly to S.B. on January 9, 2007. Even though Gravatt talked to S.B., there is no reason S.B. would admit she made any derogatory comment to the claimant when she had also received the December 22, 2006 final warning. Even though S.B. did not complain about the claimant harassing her that day, the employer considered the claimant's

conduct when she was upset to constitute harassment. The evidence does not establish that the employer talked to any co-workers who may have seen or heard the incident that resulted in the claimant becoming upset on January 9, 2007.

Gravatt admitted she was frustrated with the claimant and S.B. because she had been trying to get them to work without always fighting or disrupting the work place and creating a hostile work environment. Nothing Gravatt tried worked. When the employer noticed the claimant was upset and then blamed S.B., Gravatt decided to discharge the claimant. Even though the claimant may not have harassed S.B., Gravatt considered the claimant's conduct a form of harassment because she created a hostile work environment for Gravatt. The employer had, however, previously told the claimant that when she had problems with S.B. she needed to report them to Gravatt. While the claimant did not initially approach Gravatt about S.B.'s derogatory comment that morning, she told Gravatt there was a problem with S.B. again. The claimant, while she was upset, did not calmly explain why she was upset with S.B. that day. The claimant's failure to report the specific problem at most amounts to an error in judgment and does not rise to the level of work-connected misconduct.

The claimant may have overreacted to S.B.'s comments that day by becoming upset, but the facts do not establish she harassed S.B. or anyone else on January 9, 2007. The claimant did not commit a current act of work-connected misconduct. As of January 7, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 30, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of January 7, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs