

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BLANCA E BALTAZAR

Claimant

APPEAL NO: 10A-UI-11101-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 07/11/10

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Blanca E. Baltazar (claimant) appealed a representative's August 6, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on September 29, 2010. The claimant participated in the hearing. Gwen Timmerman appeared on the employer's behalf. Steven Rhodes served as interpreter. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 11, 2001. She worked full time as production worker at the employer's Waterloo, Iowa pork processing facility on the first shift. Her last day of work was July 13, 2010. The employer suspended her that day and discharged her on July 15, 2010. The stated reason for the discharge was falsification of a medical excuse.

The claimant had been having some difficulties with her foot and had called in sick from June 30 through July 5. She went to see a doctor on July 5 and was given an excuse releasing her to return to work on July 7. The claimant's husband went with her to the doctor and argued with the doctor about the number of days the claimant was to be excused, but the note as approved by the doctor was only through July 6. After leaving the doctor's office, the claimant's husband altered the note to indicate she could return to work on July 8; he turned the altered note into the employer on the claimant's behalf on July 6. Because the note appeared to have been altered, the employer contacted the doctor's office, which faxed a copy of the original to the employer, indicating that the claimant was to return to work on July 7.

The claimant did not return to work on July 7, but did return on July 8. When confronted, she indicated that her husband had altered the note. As a result, the claimant was initially suspended and then discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant may not have done the alteration of the doctor's note herself, but she knew it had been done and took advantage of the alteration of the note; she did not disclose her knowledge of the alteration until she was confronted. The claimant's participation in the falsification of the doctor's note provided to the employer on her behalf shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's August 6, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving

unemployment insurance benefits as of July 13, 2010. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs