

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JULIA M HERNANDEZ
Claimant

APPEAL NO: 20A-UI-03311-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEABOARD TRIUMPH FOODS LLC
Employer

OC: 03/08/20
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 9, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 13, 2020. The claimant participated in the hearing. The employer provided a telephone number prior to the hearing but was not available at that number at the time of the hearing.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time food safety regulatory specialist for Seaboard Triumph Foods from August 8, 2017 to March 2, 2020. She was discharged after taking paid time off (PTO) and then being required to submit to drug testing.

On February 21, 2020, the claimant requested to use PTO on February 28, 2020. It was her son's birthday and she does not have custody of him and planned to spend the day with him. Her request was approved and on the calendar until her supervisor crossed the claimant's name off and put her own name on instead. On February 28, 2020, the claimant called in and told the general manager she was taking a PTO day.

The claimant reported for work February 29, 2020, and was sent home after her supervisor stated they needed to meet with human resources Monday, March 2, 2020. She went to human resources March 2, 2020, and the employer asked her why she did not come to work February 28, 2020. The claimant explained she did not come in because it was her son's birthday and she does not have custody and it was one of a limited number of opportunities to spend the day with him. In response, the employer stated it wanted the claimant to submit to a drug test. The claimant was surprised and asked, "For a PTO day?" In January 2020 the claimant went to the employer and said she had a substance abuse problem and asked for help. The employer told her it would develop a plan for the claimant and repeatedly told her to come

in the following day and they would have the plan ready and go over it but they failed to create a plan and also cancelled the claimant's health insurance so she could not attend her therapy or treatment appointments. The claimant has been maintaining her sobriety, however, because if she does not her parental rights will be terminated.

The claimant signed the consent form for drug testing on March 2, 2020, and the employer walked her to the nurse's office where she took a breathalyzer test. She asked again why she was being tested for taking a PTO day. The claimant was not upset and did not raise her voice but did question the basis of the test. The general manager came in and the claimant asked her why she was being tested and the general manager stood up and said, "You're just so difficult," and left the room and went to human resources. A few minutes later the nurse received a call and said, "That's it," and walked the claimant out of the building, terminating her employment. The claimant asked the nurse if her termination was the result of retaliation for one year ago when the claimant became ill and went on FMLA. At that time, the employer terminated her employment and cancelled her insurance but did not tell the claimant. She learned of her termination upon going to a doctor's appointment and being told she could not be seen because she did not have insurance. The claimant called an attorney at that time and her attorney spoke to the employer who contacted the claimant to say her termination was a mistake and she could return to work. Her health insurance was not reinstated.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

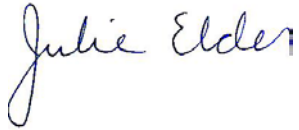
The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and 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).

While the claimant may have violated the employer's attendance policy by taking a PTO day after being approved and then denied, that situation does not provide any reasonable suspicion basis for drug testing. The claimant simply asked the employer throughout the process why she was being tested for taking a PTO day. The employer never provided an answer. Although the claimant told the employer she had a substance abuse problem in January 2020, the employer never enacted a plan or agreement wherein it stated it was going to be conducting drug tests on the claimant as a result of her admission. Instead it cancelled her insurance. Additionally, and most significantly, the claimant never refused to take the test March 2, 2020. She understandably asked why she was being tested but signed the consent form and was willing to undergo the drug screen.

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits are allowed.

DECISION:

The April 9, 2020, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



Julie Elder
Administrative Law Judge

May 18, 2020
Decision Dated and Mailed

je/scn