

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANA S MERCADO
Claimant

APPEAL NO. 07A-UI-04149-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 04/01/07 R: 01
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ana Mercado filed an appeal from a representative's decision dated April 17, 2007, reference 01, which denied benefits based on her separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on May 10, 2007. Ms. Mercado participated personally and was represented by Mary Hamilton, Attorney at Law. The employer participated by Will Sager, Human Resources Manager. Ike Rocha participated as the interpreter.

ISSUE:

At issue in this matter is whether Ms. Mercado was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Mercado's last period of employment with Tyson was from December 11, 2000 until March 27, 2007. She was employed full time as a production worker. On February 2, 2007, she won a bid for a position pulling and trimming tendons and was placed in the position on February 15. She was notified on March 27 that she had been disqualified from the position because she was not fast enough.

After the disqualification on March 27, Ms. Mercado was advised that the only position available was her former job on the ham line. The job involved using a knife. Due to a work-related injury, she had permanent restrictions that prevented her from using a knife in her work. The restrictions were imposed by Tyson's doctor. Because she was not offered any work consistent with her medical restrictions, Ms. Mercado became separated from the employment on March 27, 2007.

REASONING AND CONCLUSIONS OF LAW:

Ms. Mercado did not voluntarily quit her employment with Tyson. She left because she was not allowed to continue the job she won on February 2, 2007 and was not offered any other work that was compatible with her medical restrictions. The administrative law judge concludes that the employer initiated the separation when it discontinued providing Ms. Mercado with work she could perform. As such, the separation is considered a discharge. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

Ms. Mercado could no longer work pulling tendons as of March 27, 2007, because she was not fast enough. It appears that her inability to meet the employer's standards was due to residuals of her work-related injury. The employer failed to establish that she deliberately slowed her pace. The employer failed to establish any acts of misconduct on Ms. Mercado's part. As such, her separation was for no disqualifying reason.

Even if the administrative law judge were to conclude that Ms. Mercado quit her job with Tyson, there would still be no basis for disqualification. The employer's failure to provide work consistent with restrictions that resulted from a work-related injury would constitute good cause attributable to the employer for quitting. The employer's contention that it worked with Ms. Mercado to find alternative work as of March 27, 2007, was not established by the evidence. The employer did not successfully rebut her contention that the only work offered on March 27 was her former position on the ham line. For the above reasons, the separation would not be a disqualifying event.

DECISION:

The representative's decision dated April 17, 2007, reference 01, is hereby reversed. Ms. Mercado was separated from Tyson for no disqualifying reason. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw