

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NILDA N RUCAL BARRUTIA**  
Claimant

**APPEAL NO. 16A-UI-13610-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KEVIN MCCAIN**  
**AGRI STAR MEAT & POULTRY LLC**  
Employer

**OC: 11/13/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Nilda Rucal Barrutia filed a timely appeal from the December 15, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Rucal Barrutia was discharged on November 15, 2016 for dishonesty in connection with the employment. After due notice was issued, a hearing was held on January 17, 2017. Ms. Rucal Barrutia participated and presented additional testimony through, Shukri Yussuf. Laura Roney represented the employer and presented additional testimony through, Martin De La Rosa Loera and Jason Manning. Exhibits A, B, C were received into evidence.

**ISSUE:**

Whether Ms. Rucal Barrutia was discharged for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Agri Star Meat & Poultry, L.L.C., operates a kosher meat and poultry processing plant in Postville. Nilda Rucal Barrutia was employed by Agri Star as a full-time foreman in the poultry cut up department until November 15, 2016, when Diana Guerrero, Human Resources Manager, discharged her from the employment. Ms. Rucal Barrutia began her employment in 2011 and was promoted to foreman in July 2013.

The employer's decision to discharge Ms. Rucal Barrutia was based on two incidents wherein Ms. Rucal Barrutia discarded several hundred pounds of chicken wings without authorization. Ms. Rucal Barrutia was dishonest with the employer in connection with both incidents. The two incidents occurred on November 10 and 11, 2016.

At 9:30 p.m. on November 10, 2016, Lead Forman Martin De La Rosa Loera told the production line workers on his line and a nearby line that it was time to go home. Foreman Abdirahman Farah and Foreman Rucal Barrutia were running the nearby line. Mr. Farah asked Mr. De La Rosa Loera what he should do with the container of wings that had yet to be

processed. The container held several hundred pounds. Mr. De La Rosa Loera told Mr. Farah and Ms. Rucal Barrutia that they should store the container for use in production the following day because the wings were still fresh. Ms. Rucal Barrutia decided instead to throw away the several hundred pounds of chicken wings in a dumpster. Ms. Rucal Barrutia was a more senior foreman than Mr. Farah. Ms. Rucal Barrutia and Mr. Farah wheeled the container of wings to the dock area, where they struggled to dump the container of wings into the waste dumpster. A member of the production clean-up crew assisted them by finishing dumping the container of wings into the dumpster. Shortly thereafter, Mr. De La Rosa Loera went looking for the wings that were supposed to be stored for the next day. Mr. De La Rosa Loera eventually made his way to the dock and saw the chicken wings in the dumpster. Mr. De La Rosa Loera asked Mr. Farah why the wings were in the dumpster. Mr. Farah told Mr. De La Rosa Loera that Ms. Rucal Barrutia had asked his help in dumping the wings. Ms. Rucal Barrutia had at that point already left the workplace.

At about 2:20 p.m. on Friday, November 11, the rabbi supervising production told Mr. De La Rosa Loera to close down production immediately. Mr. De La Rosa Loera was running a chick leg line and Ms. Rucal Barrutia and Mr. Farah were running the nearby chicken wing line. The wing production line was full of several hundred pounds of chicken wings about to be processed. Mr. De La Rosa Loera took a few minutes to finished closing out his line. He then noticed that the wing line that had been full a moment early was completely empty of wings. Mr. De La Rosa Loera encountered Ms. Rucal Barrutia in the office and asked what had happened to the wings. Ms. Rucal Barrutia falsely asserted that she had finished processing the wings. Mr. De La Rosa Loera knew that was not possible. Mr. De La Rosa Loera located the several hundred pounds of chicken wings in barrels designated for waste.

On November 14, Poultry Supervisor Jason Manning and Human Resources Manager Diane Guerrero met with Ms. Rucal Barrutia and questioned her about both incidents. Because Ms. Rucal Barrutia is a native Spanish speaker, the employer had a Spanish-English interpreter assist with the interview. Ms. Rucal Barrutia denied that she had thrown away any wings on November 10 and asserted that she had completed the wings on November 11. Ms. Rucal Barrutia's assertions about both incidents were knowingly and intentionally false. The employer had interviewed and gathered statements from other employees that accurately described what had actually occurred. The employer notified Ms. Rucal Barrutia the next day that she was discharged from the employment.

While the employer does indeed throw away damaged or contaminated chicken wings as necessary, the 1,000 to 1,200 pounds of wings at issue in the two incidents were not damaged or contaminated. Only Brent Beebe, Director of Operations, has authority to authorize such conduct. In addition, the employer generates documentation in connection with such actions. Ms. Rucal Barrutia's actions on November 10 and 11 were unauthorized and undocumented.

## **REASONING AND CONCLUSIONS OF LAW:**

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.

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 proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence establishes misconduct in connection with the employment. The weight of the evidence establishes that Ms. Rucal Barrutia knowingly and intentionally acted with substantial disregard for the employer's interests when she discarded several hundred

pounds of chicken wings without authorization on November 10 and again on November 11, 2016. Ms. Rucal Barrutia knowingly and intentionally provided false information to Mr. De La Rosa Loera on November 11. Ms. Rucal Barrutia knowingly and intentionally provided false information to Mr. Manning and Ms. Guerrero when they questioned her on November 14, 2016.

Because the evidence in the record establishes a discharge for misconduct in connection with the employment, Ms. Rucal Barrutia is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Rucal Barrutia must meet all other eligibility requirements. The employer's account shall not be charged.

**DECISION:**

The December 15, 2016, reference 01, decision is affirmed. The claimant was discharged on November 15, 2016 for misconduct in connection with the employment. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs