

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SANDRA JESINA
Claimant

OSCEOLA FOODS LLC
Employer

APPEAL 21A-UI-21454-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/22/21
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On September 27, 2021, the claimant filed an appeal from the September 23, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 17, 2021. Claimant Sandra Jesina participated and testified. Employer participated through hearing representative Judy Berry and Human Resources Manager Roberto Luna. Official notice was taken of the administrative record.

ISSUE:

Was the claimant discharged from employment for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 16, 2019. Claimant last worked as a full-time production worker. Claimant was separated from employment on August 17, 2021, when was discharged for not complying with the employer's safety protocols. Specifically, the claimant was not "locking-out" and "tagging-out" the commercial saw she was operating while she was cleaning one of the saw's sensors. Failure to properly 'lock-out" and "tag-out" this machine could result in the saw blade descending from its secure position and severely injuring the person cleaning the machine. The claimant was trained on the proper procedure and she 'locked-out" and "tagged-out" the machine at the end of her shift in order to clean the machine.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the Administrative Law Judge finds that Mr. Luna's testimony was more credible than Ms. Jesina.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made

a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000). A lapse of 11 days from final act until discharge when claimant was notified on fourth day that his conduct was grounds for dismissal did not make final act a "past act". *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

The claimant was in violation of a safety protocol that was mandated to ensure the safety of the employee operating the commercial saw. The claimant's testimony strained her credibility. She was unwilling to directly answer questions relating to the safe operation of the commercial saw she was assigned to operate. Claimant's testimony concentrated on other employees' behaviors and implied there was a racial component to her discharge due to fact that the claimant is Caucasian and Mr. Luna, the Human Resources Manager, is Latino. Mr. Luna's testimony was direct, clear, and credible. The claimant was discharged for not ensuring her machine was 'locked-out' and 'tagged-out' prior to cleaning the sensor and he did not want her to suffer a severe on-the-job injury. The employer is tasked with ensuring that employees are subject to a safe work environment. The claimant's continued refusal to safely operate the commercial saw could have resulted in severe injury to herself or a co-worker. The claimant's conduct is disqualifying. Benefits are withheld.

DECISION:

The September 23, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.



Jason Dunn
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December 17, 2021
Decision Dated and Mailed

jd/kmj