

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHA A DIRISHE
Claimant

APPEAL NO: 13A-UI-07198-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY LLC
Employer

OC: 05/19/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Asha A. Dirishe (claimant) appealed a representative's June 13, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Agri Star Meat & Poultry, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 23, 2013. The claimant participated in the hearing. Laura Roney appeared on the employer's behalf and presented testimony from two other witnesses, Diane Guerrero and Holly Bohr. Karim Allin 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?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on January 31, 2012. She worked full time as a general laborer at the employer's kosher meat slaughter and processing facility. Her last day of work was May 14, 2013. The employer discharged her on May 27, 2013. The stated reason for the discharge was insubordination.

The claimant primarily worked on the beef side of the facility, usually working from about 5:40 a.m. until about 4:30 p.m., usually Sunday, Monday, and Tuesday. Occasionally persons who worked on the beef side were allowed to work hours on the poultry side if there was not enough work on the beef side and if there was work available on the poultry side.

The employer had previous issues with the claimant not following instructions and being insubordinate with supervisors. As a result of some problems in this regard on an occasion

working on the poultry side of the facility, the claimant had been given a one-day suspension on April 30, 2013 and had been advised that she would no longer be eligible for additional hours on the poultry side of the operation even if there were reduced hours on the beef side of the operation.

On May 14 the beef side of the facility was not operating due to a Jewish holiday, and the poultry side was only working a part day. Bohr, the claimant's supervisor on the beef side of the facility, had selected about a dozen persons from her staff who she informed could come in on May 14 and work some hours on the poultry side. Because of her prior discipline, the claimant was not chosen to work any hours that day on the poultry side. However, because the claimant knew that some of her coworkers had been advised they could work that day on the poultry side, the claimant decided she wished to work hours that day on the poultry side as well, so she sought to report for work on the poultry side that morning.

Several different levels of managers advised the claimant that she was not scheduled for work that day, that she was not allowed to work on the poultry side that day, and that she should go home. The claimant repeatedly refused. Ultimately, the matter was brought to the attention of Guerrero, the human resources manager. Guerrero planned to discuss the claimant's apparent further insubordination that day and told the claimant to go change clothes and come back to the office; however, while the claimant went and changed clothes, she did not return to the human resources office, but did then leave the facility. She was then off work on previously scheduled time off until May 27. When she attempted to return on May 27, she was informed she was 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's refusing to accept the employer's determination that she would not be allowed to work the additional time on the poultry side due to her prior insubordination, and her resulting refusal to leave on May 14 until the matter was escalated to human resources, 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 June 13, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 14, 2013. 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

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