

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSAURA OCAMPO
Claimant

APPEAL NO. 14A-UI-02435-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN MORRELL & CO
Employer

OC: 02/02/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated February 25, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 10, 2014. Claimant participated. Although duly notified, the employer did not participate. The official interpreter was Mr. Ike Rocha. Claimant waived notice on the issue of whether her separation was a layoff or discharge for misconduct or a voluntary quit without good cause.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Rosaura Ocampo began employment with John Morrell & Company in January 2011. Ms. Ocampo was employed as a full-time production worker and was paid by the hour. The claimant was separated from her employment by the company on or about December 15, 2013 because her current work authorization had not been completed and delivered to the claimant by the Immigration and Naturalization Service in a timely manner. Ms. Ocampo had made application for her new work authorization approximately four months before its due date, allowing sufficient extra time for the Immigration and Naturalization Service to process her authorization. Although the claimant was diligent in making application for her most recent work authorization, the authorization was delayed due to circumstances beyond the claimant's control. Although Ms. Ocampo explained the circumstances to her employer, she was nonetheless discharged from employment.

After receiving her work authorization approximately one week after her job separation, Ms. Ocampo returned to John Morrell & Company and requested to be reinstated or be rehired by the company. The company was unwilling to re-employ Ms. Ocampo due to a general reduction in workforce in the claimant's work area.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code section 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.

871 IAC 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.

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 may not necessarily be serious enough to warrant a denial of unemployment insurance 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).

Allegations of misconduct without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The question in this case is not whether the John Morrell & Company had a right to discharge this claimant for this reason but whether the discharge took place under disqualifying conditions. While the employer's decision to terminate the claimant may have been a sound decision from a

management viewpoint, intentional misconduct in connection with the work has not been established.

The evidence established that Ms. Ocampo was aware of the due date for her new work authorization and had requested a renewal of her work authorization approximately four months before its due date. The claimant and her attorney had been diligent in their efforts to secure the claimant's most recent work authorization, but due to factors beyond the claimant's control the work authorization was delayed by the U.S. Immigration and Naturalization Service. Ms. Ocampo received the work authorization one week after her job separation from John Morrell & Company.

The administrative law judge concludes based upon the evidence in the record that the claimant's discharge took place under non-disqualifying conditions. The claimant did not intend to violate company rules or Immigration Service regulations. The claimant's inability to have a current work authorization was due to factors beyond her control. When the claimant sought to be reinstated one week later after receiving her work authorization late from the Immigration and Naturalization Service, the employer declined to reinstate Ms. Ocampo. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated February 25, 2014, reference 01, is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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