

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIFFANIE WOMACK
Claimant

HORMEL FOODS CORPORATION
Employer

APPEAL 17A-UI-08589-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/30/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 15, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for excessive horseplay. The parties were properly notified of the hearing. A telephone hearing was held on September 8, 2017. The claimant, Tiffanie Womack, participated. The employer, Hormel Foods Corporation, participated through Erin Montgomery, HR Manager; and was represented by Beverly Maex of Employers Unity. Employer's Exhibits E-1 through E-9 were received and admitted into the record.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a rack wash employee, from February 3, 2015, until July 28, 2017, when she was discharged for excessive horseplay. On July 20, 2017, a coworker witnessed employee Aaron Urias pick up claimant and put her over his shoulders. Claimant bit Urias, and he put her down. Claimant did not report this incident to Human Resources. The coworker who witnessed this reported it to the employer on July 25, 2017. Montgomery asked a supervisor to follow up on the incident. On the morning of July 28, a union steward approached Montgomery and reported that on July 22, claimant and Urias were in the supervisor's office when they should have been working, and claimant sat on Urias' lap.

Montgomery interviewed both Urias and claimant on July 28. Urias admitted that he engaged in the conduct that was reported, and he acknowledged that it was inappropriate. Claimant admitted that she engaged in the conduct that was reported, though she denied it was inappropriate. The employer discharged both employees. The environment in which claimant and Urias work is often slippery, and protective equipment and hard hats are required. Their conduct on July 20 posed a significant safety risk. Additionally, the employer does not condone any employee touching another employee.

REASONING AND CONCLUSIONS OF LAW:

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

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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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). 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 employer is entitled to establish reasonable work rules and expect employees to abide by them. Since others have also been warned for similar conduct, disparate application of the policy is not evident. Even if a foreman witnessed prior similar conduct by Urias, there is no

indication Human Resources was aware of the prior incident. Additionally, while claimant alleges she was not the instigator in the July 20 incident, she did not report the conduct to Human Resources and she bit her coworker instead of asking someone for help. The employer has presented substantial and credible evidence that claimant engaged in horseplay in deliberate disregard of the employer's safety standards. This is disqualifying misconduct.

DECISION:

The August 15, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn