

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDITH CRAWFORD

Claimant

APPEAL NO: 09A-UI-08534-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOLDEN OVAL EGGS LLC

Employer

OC: 05/10/09

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Judith Crawford (claimant) appealed an unemployment insurance decision dated June 12, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Golden Oval Eggs, LLC (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 30, 2009. The claimant participated in the hearing. The employer participated through Darla Thompson, Human Resources Administrator and Supervisor Jeremy Berg. Employer's Exhibits One through Five were admitted into evidence. 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:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed full-time from October 6, 2005 through May 11, 2009. She was most recently employed as a barn worker but was discharged after she left work without authorization for 15 minutes. The claimant received a written warning on May 6, 2009 for two unexcused absences. On May 8, 2009 she finished mortality in less than two hours and her supervisor told her to again walk through the line in house 31. The next day she had only pulled out five more birds but the employee working the shift after her, pulled out three times as many birds. The employer believed the claimant could have reduced the mortality rate if she would have done what was directed, since she could have saved some birds that might have simply been caught in the fence but subsequently died since they could not get to food or water.

On May 11, 2009 the claimant clocked out during her morning break without first obtaining authorization. She typically works under different supervisors and testified she had done this before without problems. The claimant went to the local gas station to give her daughter some

money and returned shortly thereafter when she punched back in. The employer's attendance policy provides that employees can be terminated if they leave prior to the end of their shift without obtaining supervisory approval. The claimant did not leave for the day but for a short period of time while on break. The employer subsequently suspended her until a meeting was held on May 13, 2009

At that time, the employer issued the claimant a written warning for the bird mortality issue and the warning provided that termination would occur as a result of further problems. However, at the same time, she was terminated for clocking out on May 11, 2009 without a supervisor's authorization.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an

unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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 Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for leaving work while on break on May 11, 2009 without a supervisor's approval. She met her daughter to give her some money and the claimant had done this before without consequence. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. The claimant's discharge was frivolous in nature and falls far short of intentional misconduct. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated June 12, 2009, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css