

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LIO NAONADY

Claimant

APPEAL NO. 12A-UI-06907-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINERIDGE FARMS LLC

Employer

OC: 05/13/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from an unemployment insurance decision dated June 5, 2012, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held July 2, 2012, on a consolidated record with 12A-UI-06767-AT and 12A-UI-06920-AT. The three claimants, each represented by Ta-Yu Yang, attorney at law, participated in the hearing, as did the employer.

ISSUE:

Was the claimant discharged for misconduct?

FINDINGS OF FACT:

The claimants in these three consolidated hearings had worked together in the offal department of the employer's pork plant for several years. The general duties of the offal department are to separate meat byproducts not being used for human consumption from blood, bone, and other tissue that is to be sent to rendering to be used for purposes other than human or animal food. At the time of these events, pork uteri were rendered rather than processed for consumption by humans or other animals. The plant operates subject to federal regulations and inspection by the United States Department of Agriculture. Violations of federal regulation or failure to pass inspection may result in monetary fine or a temporary shutdown of the facility pending correction of deficiencies.

A few days before May 11, 2012, one of the claimants, accompanied by their supervisor, went to the office of the plant's Operations Director to request permission for each of the claimants to buy a 30-pound box of "scalded pork stomachs." Scalded pork stomachs are used in the preparation of food for human consumption. It is processed in a different department on a floor above the offal department. The operations director approved the sale.

On May 11, 2012, two of the three claimants "washed" pig uteri intended for rendering while the third claimant packed the uteri in the three boxes the claimants intended to purchase. They were placed underneath layers of scalded pork stomachs so that approximately 60 percent of each 30-pound box was made up of uteri with a layer of stomachs on top. The claimants then

marked the boxes with their names and sent them to shipping. They were to pick up the boxes from shipping at the end of their shifts.

Someone from shipping called the rendering department to say that three boxes of scaled pork stomachs were being set aside for the claimants. The shipping supervisor became suspicious when the claimants specified that they wanted the exact boxes that they had marked. The shipping supervisor then contacted the quality control supervisor. The two of them examined the three boxes, finding that the boxes were the correct weight but that they contained a mixture of stomachs and uteri. It was a violation of company rule and federal regulation to mislabel the boxes and to mix food processed for human consumption with byproducts intended for rendering. The claimants were suspended immediately and were discharged a few days later.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimants were discharged for misconduct in connection with the employment.

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 events themselves are not in controversy. The real question is whether the claimants' actions constitute misconduct. Counsel for the claimants urged the administrative law judge to apply a reasonable person standard in determining if the actions were willful.

A reasonable person would take into consideration not only his or her own interests, but also the interests of the employer. A reasonable person would have at least a general knowledge of events affecting the industry in which he or she works. A reasonable resident of Iowa working in the food processing industry would be aware of questions raised about the safety of the egg processing industry due to E. coli contamination and the recent turmoil in the beef processing industry over finely textured beef. A reasonable person would not assume that a food processor would approve the mixing and mislabeling of edible and non-edible product. The claimants did not act reasonably.

All claimants testified that they did not actually believe that the employer would mind if they substituted pork uteri for scalded pork stomachs. Credibility is found in the consistency of word and deed. The claimants' actions were inconsistent with their words. The record establishes that they did not discuss the possibility of purchasing pork uteri when they spoke to the director of operations. There is no evidence in the record that any of the claimants contacted the director of operations after the fact to modify the purchase request. The claimants did not disclose their plans to their direct supervisor. They did not re-label the boxes to disclose their actual content. Most significantly, they concealed the uteri under actual stomachs. The claimants' actions and omissions persuade the administrative law judge that they knew that what they were doing was wrong. They acted willfully.

In testimony, the employer characterized the actions as theft. The evidence does not establish that the monetary value of the uteri was greater than a like amount of stomachs or that the claimants attempted to take more than 30 pounds each. Nonetheless, the evidence establishes that all three boxes were discarded, resulting in some economic loss to the employer.

In argument, counsel for the claimants minimized the employer's evidence of potential federal sanctions. However, the claimants offered no evidence in contradiction. The administrative law judge concludes that the employer was harmed by the actions of the claimants because they exposed the employer to the potential of monetary and economic sanctions.

Finding that the claimants acted willfully, that their actions violated company policy and federal regulation while exposing the employer to the possibility of legal sanctions, the administrative law judge concludes that misconduct has been established. Benefits are withheld.

DECISION:

The unemployment insurance decision dated June 5, 2012, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw