

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**AURORA V LEYVA GARCIA**  
Claimant

**APPEAL NO: 17A-UI-13489-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 12/03/17**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 21, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 23, 2018. The claimant participated in the hearing with witness/Production Employee Marlene De Reyes and CTS Language Link Interpreter Claudia (10820). Monica Dyar, Human Resources Supervisor, participated in the hearing on behalf of the employer. Employer's Exhibits One through Nine were admitted into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time slicer operator for West Liberty Foods from September 8, 2015 to November 21, 2017. She was discharged after an altercation with a co-worker which violated the employer's zero tolerance for violence policy.

The claimant worked second shift from 3:45 p.m. to 12:30 a.m. On Friday, November 10, 2017, the claimant walked passed co-worker Luis after he put his encapsulated suit on and as she did so she pushed him and told him to get out of her way (Employer's Exhibits Two, Four, Five and Seven). Luis told her not to push him and she grabbed the neck of his suit and would not let go (Employer's Exhibits Two, Four, Five and Seven). Luis told the claimant to let go of his neck twice before grabbing her hand and pushing her off of him (Employer's Exhibits Four, Five and Seven). The claimant started screaming at Luis that she was going to the office to report him and he said they would both go (Employer's Exhibit One). After the incident was reported, the employer started an investigation and interviewed all of the witnesses to the incident. The employer has video cameras throughout the plant but did not have one that captured this incident. The camera did show the witnesses, the claimant and Luis leaving the break room at the same time and going to the dressing hallway where this situation occurred. After interviewing the claimant and Luis and a few of the other witnesses, the employer suspended

both of them Monday, November 13, 2017. The employer continued obtaining witness statements and consulted the human resources and operations teams for guidance on the issue. On November 21, 2017, the corporate human resources director instructed the employer to terminate the claimant's employment for violating its zero tolerance for violence policy.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

While the claimant denies that most of the witnesses who wrote statements saying she pushed Luis and told him to get out of her way before grabbing his suit around the neck were present during the incident with Luis, their statements were quite consistent where the claimant and her witness' testimony varied and the claimant's testimony varied significantly from her written statement. Consequently, the administrative law judge finds the claimant less persuasive than the employer's witness and exhibits.

The claimant pushed Luis and told him to get out of her way for no apparent reason. She then grabbed him around the neck of his encapsulated suit and would not let go until he was forced to push her off of him.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The December 21, 2017, reference 01, decision is affirmed. The 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn