

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SHAKENYAH O GRISBY
Claimant

APPEAL NO. 19A-UI-04190-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 04/21/19
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Shakenyah Grisby (claimant) appealed a representative's May 16, 2019, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Tyson Fresh Meats (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 17, 2019. The claimant was represented by Andy Giller, Attorney at Law, and participated personally. The claimant's mother, Kenica Grisby, observed the hearing. The employer participated by Katherine Schoepske, Administrative Human Resources Associate. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.

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 hired on September 17, 2018, as a full-time production worker. She received the employer's handbook at the beginning of her employment.

On December 18, 2018, the claimant suffered a work-related injury and, at the end of her employment, was performing work with restrictions. She properly reported her absences due to medical issues on December 20, 21, 22, and 27, 2018. The claimant's December 26, 2018, absence was excused in advance by the employer.

The claimant requested and was granted a medical leave of absence from January 4 to January 9, 2019. While on medical leave, the Iowa Department of Justice, Office of the Attorney General, Crime Victim Assistance Division sent a letter to the employer. It indicated that the claimant and her family would be relocating to a safe residence due to a crime

committed against her and her family. The claimant requested a transfer from the employer to another facility. The letter was faxed to the employer on January 7, 2019.

On January 10, 2019, the claimant was involved in a car accident on her way to work. She arrived at work late and arrived at work injured. The employer sent her home and the claimant went to the emergency room. She spoke to Supervisor Terry in the human resources department who told her to call in sick each day until the claimant received the papers in the mail about her transfer leave of absence. Supervisor Terry told the claimant to complete the paperwork, return it to the employer for a leave of absence. The employer sent the paperwork to 3006 Burnside Drive. The claimant resided at 3006 Brookside Drive.

The claimant properly reported her absence due to a medical condition each day at the instructions of Supervisor Terry. No documents arrived at the claimant's residence. On January 18, 2019, the claimant called Supervisor Terry and asked about the documents. The claimant and the employer discovered the documents were sent to an incorrect address. Supervisor Terry told the claimant she would not resend the documents and the claimant should search for them in the mail. The claimant went to the United States Post Office and was told the piece of mail could not be found.

On January 23, 2019, Supervisor Terry told the claimant she was terminated for not providing the employer with documentation. The letter that the claimant did not receive stated, "If you do not provide updated medical documentation or contact us to discuss your current status by 1/21/2019 then we will have no other choice to terminate your employment with Tyson Foods."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not establish sufficient evidence of misconduct at the hearing. It terminated the claimant for not completing paperwork it did not send the claimant. The employer knew it sent the documents to the wrong address and did not make any attempt to fix its mistake. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The administrative law judge concludes the claimant is able and available for work.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant was released to return to work with restrictions by her physician. She is considered to be available for work because her physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's May 16, 2019, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. She is able and available for work. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs