

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA F FRENCHER

Claimant

APPEAL NO: 13A-UI-10288-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 08/11/13

Claimant: Appellant (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 29, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Kristi Fox, a human resource clerk, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 2012. The claimant worked full time. The claimant usually worked as a plucker.

During her employment, the claimant received warnings for safety violations. The employer gave her a written warning on October 17, 2012, for rubbing her forehead with a knife. On March 25, 2013, the claimant received a written warning and a suspension for not having one pant leg totally inside a boot.

On August 7, 2013, the claimant was not working at her usual job that required her to wear safety glasses. She was on light-duty work and was assigned to watch for contamination. The claimant was not required to wear safety glasses while doing this job. On August 7, when the claimant was on the kill floor looking for her supervisor, she walked over to lard line to observe the work being done. She had bid to work on this line, but did not know what the job involved. The claimant did not have her safety glasses with her and there was no sign indicating safety glasses were to be worn in this area. The employer gave the claimant her third written warning for not wearing safety glasses when she observed the lard line. The employer discharged her on August 9 because she had three safety violation write-ups.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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 law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant. Since the claimant was not working at the lard line and did not see any posted sign indicating she had to wear safety glasses, the claimant did not know the employer required her to wear safety glasses while observing the lard line. Therefore, the claimant did not intentionally violate the employer's safety rules on August 7, 2013. She did not commit a current act of work-connected misconduct. As of August 11, 2013, the claimant is qualified to receive benefits.

Since the claimant was on light-duty work restrictions, the issue of whether she is able to and available for work as of August 11, 2013, will be remanded to the Claims Section to determine.

DECISION:

The representative's August 29, 2013 determination (reference 01) is reversed. The employer established justifiable business reasons for discharging the claimant, but she did not commit work-connected misconduct. As of August 11, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Since the claimant was on light-duty work restrictions when she was discharged, the issue of whether the claimant is able to and available for work as of August 11, 2013, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css