

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KOSSIWOA A ZIALENGO

Claimant

APPEAL NO: 12A-UI-01538-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 01/01/12

Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 6, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. A hearing was scheduled on April 9. Neither party participated at this hearing.

An April 13, 2012 Order reopened the hearing. Another hearing was scheduled on May 29, 2012. The claimant participated in the May 29 hearing with her attorney, Justin Gross. Eloisha Baumgartner, the employment manager, appeared on the employer's behalf. Koffie Aledi interpreted the hearing. 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 claimant voluntarily quit her employment for reasons qualifying her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 2009. She worked as a full-time production employee. The employer's policy requires written authorization for employees to take time off from work. If an employee requests time off that is not covered by vacation, an employee must complete paperwork for a leave of absence. The employee is then granted or denied the requested leave of absence.

The claimant asked her supervisor, M.M., for more than one week of vacation the claimant had available to use. M.M. denied her request for additional time off. In 2010 when the claimant asked M.M. for time off to go to a wedding, M.M. had denied her request. The claimant then asked the general manager for this time off and he granted her request. After M.M. denied the claimant's time off request in 2011, the claimant talked to the general manager again and asked him for extended time off. He told her that if he were her, he would just go to Africa and report back to work when she returned. Based on the general manager's comment, the claimant understood he had given her time off to go to Africa.

The employer granted the claimant time off for her vacation from October 31 through November 4. The claimant called in sick on November 7 through 10. She left for Africa on November 9 and returned to Iowa on December 29, 2011. The claimant reported to work on January 2, 2012. On January 2, the claimant learned all of her personal property had been removed from her locker and she was no longer considered an employee. The employer no longer considered the claimant an employee as of November 18 because she had not called or reported to work on November 11, 14, 15, 16 and 17, 2011. The employer did not have any documentation that management had granted the claimant an extended leave of absence.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a.

The claimant asserted she did not quit. Instead, the claimant did not report to work or call after November 10 because she understood the general manager gave her time off to go to Africa and she went. The employer's records did not indicate that anyone in management gave the claimant an extended leave of absence. After the claimant did not call or report to work for five days, the employer ended her employment by concluding she had abandoned her job.

The claimant's testimony is credible. The claimant understood that her immediate supervisor, M.M., denied her extended time off to go to Africa. Just as she had done in 2010, the claimant then talked to the general manager about her time off request. While the general manager may not have intended to grant her an extended amount of time off so she could go to Africa when he made the comment that if he were her, he would just go to Africa and report back to work when she returned. Based on her understanding of the general manager's comment, the claimant understood he had given her permission to take time off to go to Africa. Since the general manager did not testify at the hearing, it is not known if he made the above comment as the claimant testified or what he meant if he made the comment. Since English is not the claimant's primary language she may have misunderstood the general manager. She still reasonably relied on her understanding that the general manager gave her permission to take an extended leave of absence. The claimant would not have necessarily realized she needed the general manager to document in writing that he gave her any time off.

In this case, the claimant talked to a boss and he granted her time off before when her immediate supervisor had denied her requested time off. Without any written documentation that she had been granted an extended leave of absence, the employer reasonably assumed claimant was not returning to work when she did not call or report to work for five days. Based on the facts in this case, the employer ended the claimant's employment as of November 18, 2012. For unemployment insurance purposes, the employer discharged the claimant.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for ending the claimant's employment. Based on the facts in this case, the claimant did not commit work-connected misconduct because she reasonably believed the general manager granted her time off. As of January 1, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's February 6, 2012 determination (reference 01) is reversed. The claimant did not quit her employment. The employer discharged her for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of January 1, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs