

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGEL M TAMAYO ROBLES**

Claimant

**APPEAL NO: 17A-UI-11226-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HORMEL FOODS CORPORATION**

Employer

**OC: 09/24/17**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 25, 2017, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 20, 2017. The claimant participated in the hearing with CTS Language Link Interpreter Juan (16800). Elvia Rodriguez, Human Resources and Safety Manager; Eddie Shepherd, Supervisor; Kellie Langden, Unemployment Insurance Claims Representative; and Robin Moore, Employer Representative; participated in the hearing on behalf of the employer.

**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 Hormel Foods Corporation from June 30, 2017 to September 27, 2017. He was discharged for failing to perform his job to the employer's expectations.

The claimant was a probationary employee and as such received a weekly evaluation. On September 21, 2017, the evaluation indicated the claimant's speed and dexterity on the slicer were poor and he waited to be told to start his machine rather than starting upon his arrival on the floor; that he did not work well with others because he did not help co-workers on the line and did not clean when the line was down without being told to do so; and his attitude was negative because he had to be told to start the slicers. The claimant signed the evaluation without writing any comments on it. The claimant previously worked for the employer from January 24, 2017 through April 18, 2017, and was a "great employee." His supervisors recommended his rehire. The fact that the claimant performed so well earlier in the year demonstrates he was capable of performing the job to the employer's standards and expectations.

The week ending September 23, 2017, (no date provided) the employer completed the claimant's evaluation for the week following the September 21, 2017, performance review and noted the same issues were continuing. The claimant refused to sign the evaluation. The employer terminated the claimant's employment for failing the probationary period September 27, 2017.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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). 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 substantial and 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).

While the claimant received two poor evaluations September 21, 2017, and sometime during the week of September 23, 2017 (no date provided), the evaluations were not specific as to dates and times of the claimant's failure to perform to the employer's expectations. The claimant's performance dropped off toward the end of his probationary employment but the employer did not provide the first hand witness who issued the evaluations. Additionally, the claimant denied the employer's allegations and provided alternative explanations for the alleged activities that resulted in his termination from employment. Under these circumstances, there is not enough evidence to conclude the claimant's actions rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The October 25, 2017, reference 03, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/scn