

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**META J CROW**  
Claimant

**APPEAL NO. 13A-UI-03670-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTRO INC**  
Employer

**OC: 02/24/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated March 19, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 30, 2013. Claimant participated. Participating on behalf of the claimant was Ms. Elizabeth Norris, Attorney, Iowa Legal Aid. The employer participated by Mr. Derrek Barre, Business Partner/Production Supervisor and Ms. Rhonda Griffen, Human Resource Leader.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Meta Crow began employment with Centro, Inc., on January 3, 2011. Ms. Crow was employed as a full-time product inspector/finisher and was paid by the hour. Ms. Crow was discharged on February 22, 2013 based upon the employer's belief that the claimant had been insubordinate by failing to follow a work directive during the work shift that began on the night of February 21 and concluded on the morning of February 22, 2013.

Early in the workshift on the night of February 21, 2013, Ms.Crow summoned a supervisor over to a work area to review some work that Ms. Crow was concerned about. At that time Ms. Crow was busy using her hands and was holding a work knife in her mouth by its handle as she performed other duties. The supervisor requested that Ms. Crow not hold the knife in her mouth "until at least 3:00 a.m." (the time when a new supervisor would take over supervisory responsibilities). Ms. Crow was also requested to continue to work on "a smaller tank product" because the claimant had just returned from being off work due to a work-related injury and the supervisor did not want Ms. Crow to exacerbate any previous work injuries. Ms. Crow agreed, "Oh just until 3:00 a.m.?" and the supervisor laughed and stated, "Yes." It appears that

Ms. Crow did not further consider the matter as other workers routinely hold work knives or flashlights in their mouth as they perform their duties, but the claimant had no objection to following the directive.

Later that night, Ms. Crow had been switched to performing other duties and once again was using her hands to perform her job duties holding the work knife by its handle in her mouth. There was no knife holder on the work area where Ms. Crow was assigned at that time. At approximately 3:30 a.m. on the morning of February 22, 2013, the supervisor who came on duty observed that Ms. Crow was holding the knife by its handle in her mouth as she performed her work. The second supervisor had been ordered by the first supervisor to check and see if Ms. Crow was complying with his earlier directive. Because Ms. Crow had been observed with the knife handle in her mouth after earlier being directed not to do so, the employer concluded that Ms. Crow was being insubordinate in compromising her safety by her own actions and a decision was made to terminate Ms. Crow from her employment.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

The employer has the burden of proof in establishing job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not always serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be “substantial.” When based upon carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Hearsay evidence is admissible in administrative proceedings, however, it cannot be accorded the same weight as sworn, direct testimony, providing that testimony is credible and not inherently improbable.

In this matter, Ms. Crow appeared personally and testified under oath that she had been observed earlier in the evening on February 21, 2013 holding a work knife in her mouth by its handle while she performed other work. The claimant further testified that when she called a supervisor to the area he noticed the knife and requested that she not hold the knife in her mouth. Ms. Crow testified that the supervisor said then, “at least until 3:00 p.m.” (the time that the supervisor would be off duty). Ms. Crow testified that it was not her intention to disregard the work directive but later in the evening when she was assigned to different work, inadvertently placed the handle of the knife in her mouth as she performed the other duties, as it was a common practice and there was no place at the second work station to place the knife while she did her work.

In contrast, the employer in support of its position relies primarily on hearsay evidence that the claimant was intentionally insubordinate and had endangered herself by placing the sharp portion of the knife in her mouth as she worked after being specifically instructed not to do so.

The administrative law judge finds Ms. Crow’s testimony credible and not inherently improbable. The evidence establishes that the practice was not uncommon in the work place and had generally not been previously enforced. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written) and reasonable notice should be given. The notice given to Ms. Crow on the night in question was not taken by the claimant as a “warning,” however, the claimant’s intention was to comply with the directive. The claimant’s later inadvertent placing of the handle of the work knife in her mouth as she performed other duties did not rise to the level of intentional, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated March 19, 2013, reference 01, is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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