

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNE P LEVONGKHOM
Claimant

APPEAL NO. 16A-UI-01839-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEBSTER CITY CUSTOM MEATS INC
Employer

OC: 01/10/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Webster City Custom Meats, Inc., the employer, filed a timely appeal from a representative's decision dated February 4, 2016, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the claimant was dismissed from work on December 17, 2015 under non disqualifying conditions. After due notice was issued, a telephone hearing was held on March 8, 2016. The claimant participated. Participating on behalf of the claimant was Mr. William Scherle, Attorney at Law. The employer participated by Mr. Stuart Cochrane, Attorney at Law, and witness, Ms. Connie Ingraham. The official interpreter was provided by Interpreter Services. Exhibits One, Two and Three were admitted into the hearing record.

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: Anne Levongkhom was employed by Webster City Custom Meats, Inc. from August 23, 2010 until December 17, 2015 when she was discharged from employment. Ms. Levongkhom was employed as a full-time box maker and was paid by the hour. Ms. Levongkhom last worked for the company on December 1, 2015.

Ms. Levongkhom was discharged by her employer on December 17, 2015 based upon the employer's belief that they could not accommodate a doctor's restriction dated December 1, 2015 that the claimant had provided to the company stating, "Patient is restricted from cold weather environment at work but may return to full-time work." Ms. Levongkhom had suffered a work injury to her foot on July 27, 2015. Ms. Levongkhom had returned to work following her

injury with doctor's limitations. The claimant had been assigned to generally work as a box maker and also assigned to work in the company's bacon department. Ms. Levongkhom preferred the assignment in the box making department as she was able to sit and stand more often and the temperature in the box making department was somewhat warmer and more agreeable to the claimant. Ms. Levongkhom had not complained about the temperature or her duties that had been assigned to her after her injury.

Based upon the statement contained in the December 1, 2015 doctor's statement, the employer chose to remove the claimant from her assignment as a box maker because the employer wanted more clarification about the meaning of the work environment limitation. Because of the nature of the work, the production areas of the employer's plant are cooled. When the claimant could not provide any further information, she was sent home by her employer.

Ms. Levongkhom had been scheduled for an independent medical examination by the employer's Workmen's Compensation insurance carrier. The examination was conducted on December 4, 2015 and the resulting doctor's report was mailed back to the Workmen's Compensation insurance carrier, the company that had been retained by Webster City Custom Meats, Inc. to provide coverage and represent them in Workmen's Compensation matters. Ms. Levongkhom was not informed of the results of the independent examination until a substantial period of time later.

On December 17, 2015, Ms. Ingraham contacted the claimant in an attempt to obtain more information from her about the December 1, 2015 "cold weather environment" limitation. Ms. Ingraham then stated the claimant's job could not be held open for her because of the limitations. The claimant reasonably concluded that Ms. Ingraham had told her that her job had ended with the company. The claimant did not disagree and stated in fact that maybe it was for the best. It appears that the employer was later provided results from the December 4, 2015 independent examination that was requested by the Workmen's Compensation carrier. That report removed any personal restrictions on the claimant's work.

It is the employer's belief that the claimant in effect quit her job by failing to provide information to the employer when questioned about her limitations on December 17, 2015 and that the claimant's statement indicated that it might be best to leave constituted an intention to quit her employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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 Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The question before the administrative law judge is whether the evidence in the record establishes that the claimant quit employment or was discharged by the employer. The administrative law judge concludes based upon the evidence in the record that the employer initiated the job separation on December 17, 2015 by informing the claimant that the employer could no longer hold her job open and the position had been filled. The employer did not offer the claimant a different job position or offer any additional accommodations. The employer removed the claimant from her light-duty job positions over two weeks before although the claimant had not asked to be taken off the job. The employer did so pending verification by a doctor's statement. The claimant's inability to provide information about the doctor's examination that had taken place on December 4, 2015 was not misconduct in connection with the claimant's work. She was unaware of the results at the time and the report itself had been made available to the company's agent, its insurance carrier, some three days previously on December 14, 2015.

While the decision to separate Ms. Levongkhom may have been a sound decision from a management viewpoint, the evidence in the record does not establish misconduct on the part of Ms. Levongkhom. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated February 4, 2016, reference 01, is affirmed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs