

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARACELI A ALCARZ DELIMON
Claimant

APPEAL NO: 10A-UI-11525-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CURLYS FOODS
Employer

OC: 05/09/10
Claimant: Appellant (2)

Section 96.5-2 a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 13, 2010 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge. The claimant participated in the hearing with her attorney, Paul Deck. Erick Ramirez and Edward Young testified on the claimant's behalf. Kathy Peterson, the human resource manager, testified on the employer's behalf. Ike Rocha interpreted the hearing. During the hearing, Claimant Exhibits A, B, and C were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in May 2006. The claimant worked as a full-time trimmer. The claimant understood the employer's harassment and violence-free policy. Prior to July 21, 2010, the claimant's job was not in jeopardy and she had never threatened anyone or violated the employer's harassment and violence-free policy.

On July 20, 2010, the claimant told Peterson she was having problems with employees. Peterson did not investigate the claimant's complaint because she did not identify the employees she had problems with. Peterson did not understand that employees were spreading rumors concerning property the claimant's deceased father-in-law owned.

On July 21, the claimant raised her voice after R. threatened to pull her hair. R. worked next to the claimant. After the claimant put down her knife, the claimant and R. argued. A co-worker who worked across from the claimant, M.L., stopped a lead and reported that she was worried about the way the claimant acted.

When the employer talked to R., she reported that the claimant had yelled at her. R. did not report that the claimant pointed a knife at her. M.L. reported that the claimant pointed a knife at

her. A couple employees reported the claimant pounded the meat with the knife and that she pointed a knife at other employees. When the employer talked to the claimant, she admitted she yelled, but denied she pointed a knife at anyone. Two other employees, Young and Ramirez reported hearing the claimant raise her voice but had not seen her point a knife at anyone or pound meat with the knife.

Based on the report of R., M.L and two other employees, M.M. and M.G., the employer concluded that even though the claimant may not have intended to threaten any employee, her conduct – yelling, pointing a knife at other employees and pounding meat with her knife amounted to threatening and intimidating conduct that violated the employer's workplace harassment and violence-free policy.

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).

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 relied on unsupported hearsay evidence from employees who did not testify at the hearing. The problem with hearsay evidence is illustrated by the difference in the employer's testimony and the conversation the claimant had with some of the same people. See Claimant Exhibits A, B and C. The claimant and her witness's testimonies are credible and must be given more weight than the employer's reliance on unsupported hearsay information. As a result, the Findings of Fact reflect the claimant's version of the July 21 incident. Specifically, on July 21, the claimant and R. engaged in a verbal confrontation after R. threatened to pull the claimant's hair. They both raised their voices and became upset with one another. The claimant did not point her knife at any employee and she did not threaten any employee. The claimant only raised her voice at R.

The employer acknowledged in the termination letter that the claimant may not have intended to threaten anyone. But based on the report of four employees, the employer concluded the claimant violated the employer's workplace safety policy and discharged her. A preponderance of the credible evidence does not establish that the claimant intended to violate the employer's workplace safety policy and did not commit work-connected misconduct. Therefore, as of May 9, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's August 13, 2010 decision (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of May 9, 2010, 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/css