

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**LISA A FRENCH**  
Claimant

**MINSA CORPORATION**  
Employer

**APPEAL 15A-UI-10615-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/16/15**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 17, 2015, (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on October 6, 2015. The claimant participated personally. The employer participated through Renee Hanrahan, human resources. Employer Exhibits One through four were admitted into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a lab technician and was separated from employment on August 20, 2015, when she was discharged for unsatisfactory work performance after not completing test samples (Employer Exhibit One).

The employer produces corn flour for its customers, and as a result, performs certain tests on sample batches before release to ensure quality control. The claimant was hired originally in production and in a lateral move, initiated by the employer, was a lab technician at the time of separation. The employer believed the claimant had successfully demonstrated an ability to perform the job satisfactorily while employed. However, the claimant was also issued two written warnings for failure to complete her sample tests on June 4 and June 30, 2015 (Employer Exhibits Two and Three).

The final incident occurred when the claimant's supervisor reported the claimant did not complete testing (which involves eight to ten tests) on her samples during the week of August 9 through August 15, 2015. The claimant denied failing to complete the required tests or falsifying documents that reflected she had completed the tests when she had not. The employer did not present any information to the claimant at the time of separation about the final incident or explain to her why it believed she had not completed the tests as required. She was subsequently discharged.

Employer witness, Renee Hanrahan, issued the termination, but did not work with the claimant on the production floor. No written statements were offered in lieu of appearance for co-workers who had knowledge about the specific tests or details that led to the claimant's separation.

### **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 § 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(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 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).

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).

Based on the employer's policy, the employer had business reasons for discharging the claimant. The evidence does not establish that the claimant intentionally disregarded the employer's interests. The claimant had been previously counseled about fully completing her sample tests, including a final warning on June 30, 2015. The claimant denied not performing the required tests and the employer did not present any first hand testimony or supporting evidence as to the claimant's failure to complete her tests during the week of August 9 through August 15, 2015. Neither the claimant's immediate supervisor, nor her peer, Ellen Burch, attended the hearing, or submitted written statements in lieu of appearance. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer. The employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. Accordingly, benefits are allowed.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

**DECISION:**

The September 17, 2015, (reference 02) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

jlc/pjs