

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET L SCHRUNK
Claimant

APPEAL NO. 09A-UI-15362-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL KITCHEN SOLUTIONS INC
Employer

OC: 11/30/08
Claimant: Appellant (2)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 6, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 13, 2009. Claimant participated. She was represented by Jim Hamilton, paralegal. The Employer notified the agency that it would not be participating in the hearing. The record consists of the testimony of Janet Schrunk.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant had worked for the employer full time since March 8, 2004. Her job was to peel, inspect and package eggs. In June 2009 she received a satisfactory performance evaluation. The claimant developed pain in her right wrist in mid July 2009. She reported her problem to her supervisor, Greg, and on September 10, 2009, the claimant saw a physician. She was accompanied at that visit by Greg. The doctor told the claimant and Greg that the claimant had carpal tunnel syndrome and needed surgery. He placed the claimant on first a 20-pound weight restriction and then at Greg's request, a 25-pound weight restriction.

On September 12, 2009, Greg placed the claimant on suspension. She was called into the office on September 15, 2009, and was terminated. Greg told the claimant she was not capable of doing her job.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct. There is no evidence whatsoever of misconduct in this case. The employer elected not to participate in the hearing. The representative's decision indicated that the claimant was terminated for wanton carelessness in performing her job. There was no evidence of wanton carelessness and if the claimant was not able to perform up to standards, it may well have been due to her physical problem. The claimant was not discharged for disqualifiable reasons and benefits will be allowed if the claimant is otherwise eligible. The issue of able and available may need to be examined to see if the claimant's physical problems and need for surgery cause her to be ineligible for benefits. The able and available issue was not properly before the administrative law judge in this case.

DECISION:

The decision of the representative dated October 6, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs