

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIA TORRESS ARIZAGA**

Claimant

**APPEAL NO. 10A-UI-02409-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**Original Claim: 01/03/10**

**Claimant: Appellant (4/R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Maria Torress Arizaga (claimant) appealed a representative's February 1, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 5, 2010. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Jessica Sheppard appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 29, 2002. She worked full-time as a production worker in the employer's Ottumwa, Iowa, pork processing facility. Her last day of work was December 5, 2009. The employer discharged her on that date. The reason asserted for the discharge was that her non-resident alien employment authorization expired on that date.

The claimant had made application to renew her employment authorization document to the Department of Homeland Security, Bureau of Citizenship and Immigration Services; she had received an acknowledgement from the Bureau indicating that her application had been received on September 7, 2009, almost three months prior to the expiration of her current authorization. However, by December 5, she had not yet received her new employment authorization. There was no evidence that the claimant was in any way responsible for the delay in the issuance of the new employment authorization. However, as a result of the claimant's lack of a valid employment authorization after December 5, the employer had no choice but to discharge the claimant.

On or about February 4, 2010, the claimant did receive her employment authorization, which was backdated to be effective December 5, 2009. The claimant presented her new employment authorization to the employer on February 5, 2010 and was reinstated to her employment.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the expiration of the employment authorization. While it is correct that the employer had no choice but to remove the claimant from the employment, the employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

A situation such as that presented in this case regarding the lack of a valid employment authorization is better addressed as an issue of the claimant's eligibility for unemployment insurance benefits as being able and available for work, as a person who has not received her timely requested renewal will be unemployed through no fault of her own (Iowa Code § 96.2), yet will not be able to satisfy the underlying requirements to receive unemployment insurance benefits; because without the authorization, she cannot work and cannot receive unemployment insurance benefits. Iowa Code § 96.5(10); 871 IAC 24.60. While the outcome, particularly in a situation as that in this case, will usually be virtually the same, in so far as the claimant is likely deemed ineligible to receive benefits for the period in which she was unemployed, it would be a straight disqualification without the onerous impact that the person be required to earn ten times the weekly benefit amount in order to requalify for future benefit eligibility. That negative impact

would be all the more oppressive if the person was not as fortunate as the claimant was here to be able to return to her prior employment upon her eventual receipt of the delayed employment authorization.

However, the issue as to whether the claimant was able and available for work during the interim between the expiration of her prior employment authorization and the receipt of her renewed authorization and her return to work with the employer was not included in the notice of hearing for this case; since the claimant did not participate in the hearing, waiver of notice on that issue could not be obtained. Therefore, the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5). Benefits shall not be released pending resolution of that issue.

**DECISION:**

The representative's February 1, 2010 decision (reference 01) is modified in favor of the claimant. The employer did discharge the claimant, but not for disqualifying reasons. The claimant could be qualified to receive unemployment insurance benefits if there was a period after December 5, 2009 that she was otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the able and available issue. Benefits shall not be issued until resolution of that issue, and then not unless the determination on that issue is that there was some period during the claimant's unemployment in which she could satisfy the eligibility requirements.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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