

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA E ARAGON

Claimant

APPEAL NO. 12A-UI-08858-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EZ PAYROLL & STAFFING SOLUTIONS

Employer

OC: 06/17/12

Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Maria (claimant) appealed a representative's July 16, 2012 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with EZ Payroll & Staffing Solutions (employer) for failure to perform work that she was capable of performing. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 16, 2012. The claimant was represented by Angela Blessing, Attorney at Law, and participated personally through interpreter, Steven Rhodes. Attorney Charles Pierce observed the hearing. The employer participated by Bella Jorgensen, Branch Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 26, 2011, as a full-time packaging operator. The claimant does not remember signing for receipt of the employer's handbook. The employer never warned the claimant that she could be terminated for her work performance.

On June 17, 2012, the claimant was working on Line One, a line with which the claimant was not familiar. The operator left the claimant alone. The claimant was working to the best of her ability but the bottles started to back up and there were problems with the pallets. Other workers had the same problem on this line. The claimant alerted her team leader but the team leader did not come to the line immediately. When she arrived, the team leader started to help the claimant but some of the bottles had to be thrown away. The team leader alerted the supervisor. The supervisor assumed that the claimant was trained to perform the work. The supervisor sent the claimant home for the day. On June 20, 2012, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing.

The employer was unable to provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The claimant's poor work performance was a result of her lack of training. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's July 16, 2012 decision (reference 02) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css