

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA J CUNNINGHAM
Claimant

APPEAL NO. 12A-UI-13222-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA SELECT FARMS INC
Employer

OC: 10/07/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Melissa Cunningham (claimant) appealed a representative's October 26, 2012 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Iowa Select Farms (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 6, 2012. The claimant participated personally. The employer participated by Cathy Rieken, Human Resources Generalist; Don Hunt, Supervisor; Emily Antinoja, Animal Well Being Trainer; Mike Faga, Director of Animal Well Being; Lorren Helton, Manager of South Twenty; and Wendi Snider, Animal Well Being Specialist. The employer offered and Exhibit One was received into evidence.

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 May 10, 2010, as a full-time farm technician. The claimant signed for receipt of the employer's handbook on May 6, 2010. On July 18, 2011, the claimant signed an Animal Welfare Statement and the claimant became a mandatory reporter of any mishandling of animals. This is important to the employer's business interests. Employees understand that they would be terminated if they violated this rule.

On October 5, 2012, the claimant witnessed an employee toss two piglets to another co-worker. The claimant did not tell the co-worker to stop. This co-worker had tossed piglets in the past and the claimant did not report her. She did not want to get the co-worker in trouble. The claimant knew that she was required to report the co-worker's actions but she did not. The supervisor walked in and saw the co-worker's actions and, as a mandatory reporter, reported the situation. On October 12, 2012, the employer terminated the claimant for failure to report the piglet tossing. Four employees were terminated for tossing piglets or failure to report the tossing of piglets.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was 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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant saw the co-worker toss piglets many times and did not report her. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's October 26, 2012 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css