

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARRIE MORRISON

Claimant

APPEAL NO: 12A-UI-07644-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 06-03-12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 20, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 23, 2012. The claimant participated in the hearing. Dzemal Grtic, Human Resources Clerk, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general mechanic for Tyson Fresh Meats from May 21, 2007 to June 4, 2012. On June 1, 2012, the claimant changed a split saw blade on a saw without following the lock-out tag-out procedure. She did shut the power to the saw off but forgot to lock it out because a co-worker she had problems with in the past began verbally harassing her. The parties had been told not to speak to each other previously because problems developed after he asked her out and she turned him down. The co-worker violated the employer's admonition and distracted the claimant, which in turn caused the claimant to forget to follow through with the lock-out tag-out procedure. The employer caught the situation on a video recorder placed on the split saw stand. The employer also believed the claimant failed to carry the saw blade to the saw station using a blade carrier. The claimant actually did use the blade carrier but it was out of the video recorder view. The claimant was sent home June 1, 2012, and instructed to return June 3, 2012. During that time the employer convened a committee to review the incident, which was a core safety mandate violation, and it had the choice of recommending a three-day suspension or termination of the claimant's employment. The committee determined termination was in order because the violation was of a life-threatening nature. The matter was then referred to the corporate office which also recommended termination. The situation was then sent back to the plant's human resources office and the decision was made to terminate the claimant's employment. The claimant had not received any previous verbal or written warnings during her tenure with this employer.

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 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 proving disqualifying misconduct. 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). While the claimant failed to lock-out the saw before changing the blade, she was distracted by a co-worker whose sexual advances she previously rebuffed, resulting in both parties being told not to speak to each other. That employee was harassing her June 1, 2012, and she forgot to follow the entire lock-out procedure. With regard to carrying the saw blade without a carrier, the employer did not have enough evidence to establish that as fact during the hearing. The claimant credibly testified she did use the carrier but it was out of view of the video recorder. Additionally, the claimant had not received any previous warnings and did not have any safety violations in her five years of employment with Tyson. Under these circumstances, the administrative law judge concludes

the claimant's actions were an isolated incident, caused at least in part by a co-worker, and as such do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 20, 2012, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs