

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELITA GONZALEZ

Claimant

APPEAL NO. 08A-UI-01911-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

**OC: 01/20/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 13, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 11, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Lauri Elliott participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a production worker from April 20, 2006, to January 25, 2008. She was informed and understood that under the employer's work rules, recklessly operating equipment with the intent or high possibility of hurting another employee was prohibited.

On January 25, 2008, the claimant was operating a forklift device called a walkie. Her job on that day was to watch the belly line and remove combo bins of meat products when they were full. That morning the claimant was starting to move forward toward a combo bin that was nearly full when another employee who appeared to be in a rush stepped right in front of the walkie. The claimant stopped the walkie immediately. The employee kept walking and then turned around and starting talking to the claimant in an animated manner, but the claimant could not understand what she was saying. As the claimant turned to go back to work, the employee went in front of the walkie causing the claimant to have to stop the walkie again. She accused the claimant of almost running over her foot. The claimant replied that she was just doing her job and was not trying to run into the employee. When the employee again accused the claimant of running over her foot, the claimant responded that the employee was not watching where she was going.

They argued for a short time about this, and then the woman walked away. When the claimant saw the employee again, she approached her with her walkie but stopped before getting near

her. She pointed with her index finger and said if the employee had a problem, she should talk to the claimant's supervisor. The employee said, "You're damned right I have a problem. If you want we can take this to the front office." The claimant replied that she had no problem with that. The women then went back to work.

Next, the utility worker for the line the claimant was working on called for her to get over to the line to get a combo bin out before it started overflowing. The general foreman, Jeremy Boettcher, had witnessed the end of the conflict between the claimant and the employee and wanted to talk to her. When she moved forward to remove the combo bin, Boettcher yelled at her to get off her walkie. She said "no" because she knew she would get in trouble if she did not get the combo bin out and bellies started spilling on the floor. Boettcher keep yelling at her persistently. She did not know what to do but she got off her walkie and walked to the back room.

Boettcher made a report to the assistant human resources manager, Lauri Elliott, about the claimant. He reported she had almost run into an employee, had argued with her, "had flipped her off," and had refused to get off her walkie when he ordered. When Elliott questioned the claimant, her explanation was consistent with the findings in the paragraphs above.

Elliott discharged the claimant for violating the work rules prohibiting recklessly operating equipment with the intent or high possibility of hurting another employee.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified very credibly and consistently regarding what happened. The employer's evidence was hearsay, and no witness to the events that led to the claimant's discharge testified at the hearing. The claimant's testimony outweighs the employer's evidence. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated February 13, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw