

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

IRMA RAYOS

Claimant

APPEAL NO. 10A-UI-16467-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 10/24/10

Claimant: Respondent (2R)

Section 96.5-2-a – Discharge

Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

West Liberty Foods filed a timely appeal from a representative's decision dated November 23, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was scheduled for and held on January 18, 2011. The claimant participated personally. The employer participated by Ms. Monica Dyar, Human Resource Supervisor. Employer's Exhibits One through Eight were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Irma Rayos was employed by West Liberty Foods from September 20, 2010 until October 28, 2010 when she was discharged from employment. Ms. Rayos worked as a full-time production worker and was paid by the hour.

The claimant was discharged after an investigation showed that Ms. Rayos had directed inappropriate and demeaning language towards a company lead person on October 23, 2010. On that date the claimant had been instructed by a female lead person to stop "running around" the area without proper sanitary gear in place. Ms. Rayos misinterpreted the lead person's statement to indicate that the claimant had been running around the plant, when Ms. Rayos had in fact been in the production area. The claimant had experienced some difficulty in working with the same lead person at another place of employment and believed that the lead person was singling the claimant out for unfair treatment. Ms. Rayos confronted the lead person about the matter calling the lead person a "fucking bitch." Because of the intensity of Ms. Rayos' anger another worker stepped between the parties fearing that Ms. Rayos would result to physical violence.

After the matter was reported to company management, company management interviewed a number of employees to determine whether the allegations were accurate. Jean Spiesz, an individual with the company's human resource department, contacted Ms. Rayos by telephone to obtain the claimant's statement about the matter. During the telephone conversation Ms. Rayos repeatedly threatened to "punch out" the lead person.

After considering the number of statements made by other employees confirming that the initial incident had taken place and that Ms. Rayos had directed inappropriate language towards a lead person and because of the claimant's additional statements and threats of violence, a decision was made to terminate Ms. Rayos from her employment. The company has a policy which prohibits threats, intimidation, or abusive or threatening language towards others. Ms. Rayos was aware of the policy and had signed an acknowledgment of the policy when she was hired.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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 this matter. See Iowa Code section 96.6.2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits.

See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this case the claimant was discharged after it was reported and confirmed by other employees that the claimant had made a vile and disparaging statement towards a company lead person on October 23, 2010. While the company still investigated the matter, Ms. Rayos made additional statements repeatedly threatening physical harm to the lead person during telephone conversations. The claimant was therefore discharged for violating the company's zero-tolerance policy on violence or the threats of violence in the workplace. The claimant was aware of the policy and had acknowledged receipt of the company handbook. Although the administrative law judge is cognizant that Ms. Rayos denies any and all misconduct in this matter, the administrative law judge concludes that there is sufficient corroboration in the record of the employer's position that the claimant had repeatedly acted inappropriately and was therefore discharged from employment.

Threats towards an employer or supervisor constitute misconduct. See Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational disrespect or name-calling context may be recognized as misconduct disqualifying the employee from receiving unemployment insurance benefit. An isolated incidence of vulgarity can constitute misconduct toward disqualification for unemployment benefits if it serves underlying a supervisor's authority. Deever v. Hawkeye Window Cleaning Inc., 447 N.W.2d 418 (Iowa Ct. App. 1989).

The evidence in the record establishes that the claimant was discharged because she directed inappropriate language towards a company management individual and made threats to harm that individual. Accordingly, Irma Rayos is disqualified for benefits until she had worked in and been paid wages for insured work equal to ten times her weekly benefit amount providing that she is otherwise eligible.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue

of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated November 23, 2010, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, and meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css