

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH D ALLEN
Claimant

APPEAL NO. 08O-UI-03105-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE MEAT CLEAVER
Employer

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

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, The Meat Cleaver, filed an appeal from a decision dated February 15, 2008, reference 01. The decision allowed benefits to the claimant, Deborah Allen. After due notice was issued, a hearing was held by telephone conference call on April 14, 2008. The claimant participated on her own behalf. The employer participated by Co-Owners Julie Gray and Mark Berry.

ISSUE:

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

FINDINGS OF FACT:

Deborah Allen was employed by The Meat Cleaver from July 26, 2007 until January 15, 2008, as a full-time general laborer. Her last day of work was January 8, 2008, and after that she called in daily to ask whether any work was available. On January 15, 2008, Co-Owner Julie Gray told Ms. Allen work had slowed down and probably would not pick up until Easter. Ms. Gray said if any work became available, the employer would call Ms. Allen. Some work was available later in the week, but the employer had lost the claimant's telephone number and did not call her to come to work.

Deborah Allen filed a claim for unemployment benefits with an effective date of January 20, 2008, as a layoff for lack of work. When the employer received the notice of claim, it was assumed the claimant had quit.

REASONING AND CONCLUSIONS OF 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 claimant did not quit, she was discharged. The employer assumed Ms. Allen had quit because she filed a claim for unemployment benefits. Even though no work was available to her, it appears the employer was surprised to learn the claimant was seeking such benefits. There is nothing in the record to establish she quit, only that she was filing as a layoff for lack of work. This is not a voluntary quit, and the employer's decision not to recall her when work picked up is a discharge. There is no evidence of misconduct and benefits are allowed.

DECISION:

The representative's decision of February 15, 2008, reference 01, is affirmed. Deborah Allen is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw