

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA MELENDREZ
Claimant

APPEAL NO. 07A-UI-07206-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA PACIFIC PROCESSORS INC
Employer

**OC: 06-24-07 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 13, 2007, 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 August 8, 2007. The claimant participated in the hearing with Interpreter Ike Rocha. The employer did not respond to the hearing notice or request a postponement of the hearing as required by the hearing notice and did not participate in the hearing.

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: A disqualification decision was mailed to the claimant's last-known address of record on July 13, 2007. The claimant did not receive the decision. She experienced problems with her post office box a few weeks before the appeal hearing. Consequently, the appeal was not filed until July 24, 2007, which is after the date noticed on the disqualification decision. Because the claimant was having problems with the United States Postal Service the administrative law judge concludes her appeal is timely.

The claimant was employed as a full-time production worker for Iowa Pacific Processors from April 30, 2007 to June 21, 2007. She was upset by the treatment she received from her supervisor and complained to the employer about her supervisor's conduct on two occasions prior to June 21, 2007. On that date her supervisor threw a piece of meat in the claimant's face and she complained to the employer again and was told, "That's the way it is here" and then told there was "no job anymore" because she complained about her supervisor too often and needed to show respect to her supervisor. The employer then took her equipment and told her she could reapply in six months.

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). When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. The employer failed to meet its burden. Work-connected misconduct has not been established in this case. Benefits are allowed.

DECISION:

The July 13, 2007, 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/css