

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HAMILO DAUD**  
Claimant

**APPEAL NO. 12A-UI-06890-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGRO STAR MEAT & POULTRY LLC**  
Employer

**OC: 05-06-12**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 29, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 3, 2012. The claimant did participate along with the assistance of interpreter, Manana Osman. The employer did not participate. Lara Rooney called in a telephone number for the hearing but did not answer the telephone when the Administrative Law Judge called to begin the hearing nor did she call in before the hearing was completed.

**ISSUE:**

Was the claimant discharged due to job 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 general laborer full time beginning in March, 2010 through May 7, 2012 when she was discharged. A coworker of the claimant hit her car in the parking lot in February. The coworker begged the claimant to refrain from calling the police or taking her insurance information. She did not call the police nor did she get insurance information from the coworker. Over the following months the claimant repeatedly asked her coworker to pay for the damage he had caused to her car. He would not pay. The claimant did not know where he lived or how to contact him so she could only speak to him at work between shifts as they worked different shifts. The claimant never touched the coworker. She was brought into the human resources department and her coworker accused her for harassing him, threatening him and denied ever damaging her car. She was discharged for harassing a coworker.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

The Administrative Law Judge is persuaded that the claimant never touched her coworker but only asked him to pay for damage he had done to her car. She did not create a hostile or intolerable work environment by merely asking a coworker to pay for damage he caused to her car. In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer did not meet the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are

changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

**DECISION:**

The May 29, 2012 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/css