

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIA C RAMIREZ
Claimant

HORMEL FOODS CORPORATION
Employer

APPEAL 18A-UI-06444-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/13/18
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the June 4, 2018, (reference 01), unemployment insurance decision that allowed benefits based upon a discharge from employment. After due notice was issued, a telephone conference hearing was held on June 27, 2018. Claimant participated through CTS Language Link Spanish language interpreter 11412. Employer participated through human resource and safety manager Elvia Rodriguez, manufacturing supervisor Freddie Brooks, and production supervisor Abby Larson. Diana Perry-Lehr of Employers Unity represented the employer.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general laborer. The separation date was May 15, 2018, two weeks from the end of her probationary period. Her last day of work was May 10, 2018. On May 9, she was working on her assigned line in manufacturing when Brooks sent her to the packing area at 6:45 p.m. She went to break with the packing line workers as scheduled at 7:30 p.m. While at break at about 7:45 p.m., Larson told her to return to manufacturing. Larson did not say whether she could finish the break. Claimant is pregnant so it took her the remaining break time to get dressed to return to work at manufacturing. The pants the company provides are in poor condition and it took time to find a pair without holes. She did not recall that she did not need to change the pants portion of the uniform and erred on the side of caution. Orientation was confusing because so many rules were explained to her. She got into the uniform and then went back to work at the manufacturing line. She worked and went to break with the rest of the manufacturing line workers at 8:15 p.m. Had she not gone with them, she would have been alone on the manufacturing line. When lines have switched employees in the past she has seen others take two breaks without consequence. Other employees were known to sleep on the job or extend breaks outside to run errands without discipline or discharge. She did not ask a supervisor because there was not one in the area. While on the manufacturing line break, supervisor Andrew¹ asked why she was on break. He did not ask if

¹ Andrew did not participate at hearing.

she had taken two breaks. She said she missed part of the packaging line break time while getting dressed. Andrew called in Brooks, a union representative and interpreter Paula.² Brooks reviewed surveillance video.³ They told her to sign a piece of paper described as a warning. She does not read and relied upon the translation provided to her. She did not file a grievance with the union. Since she notified the employer she is pregnant, supervisors, when she could find them, would not allow her to go to the restroom. She ended up with a kidney infection because of holding her urine and had an accident because of not being able to go to the restroom as needed.

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 section 96.5(2)a provides:

Causes for disqualification.

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted). ...the definition of misconduct requires more than a "disregard" it requires a "carelessness or negligence of such degree of recurrence as to manifest equal culpability,

² Paula did not participate at hearing.

³ Neither surveillance footage or still photographs were submitted.

wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests." Iowa Admin. Code r. 871-24.32(1)(a) (emphasis added).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established.

Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

The conduct for which claimant was discharged was merely an isolated incident of miscommunication and misunderstanding. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met 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. Training or general notice to staff about a policy is not considered a disciplinary warning. Even though the claimant did take a longer break than allowed, since the consequence was more severe than other employees received for similar conduct, the disparate application of the policy cannot support a disqualification from benefits.

DECISION:

The June 4, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Since this employment does not fall within the claimant's base period, this employer is not liable for benefits paid during this claim year.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs