

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA M VELTHOFF
Claimant

APPEAL NO: 09A-UI-11350-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARAMARK CAMPUS LLC
Employer

OC: 06/28/09
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Aramark Campus LLC (employer) appealed a representative's July 30, 2009 decision (reference 01) that concluded Sara M. Velthoff (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for non disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 24, 2009. The claimant participated in the hearing. Deb Bloomer and Kim Richardson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 29, 2008. The claimant worked as full-time cook supervisor. She supervised inmates who made large batches of food. The claimant's supervisors were Bloomer and Richardson.

During her employment, the claimant noticed that a supplier often shorted the amount of meat supplied to the employer. The claimant reported this discovery to Richardson and Bloomer. The claimant understood neither Bloomer nor Richardson was going to pursue her complaint because no other cook supervisor reported this problem. Although the claimant had gone to a district supervisor about other matters, she did not report this observation or the results of her conversation with Bloomer and Richardson to him. The claimant did not record on production sheets that the meat supplied was short.

The claimant understood the county jail was investigating issues with the employer. On June 15, the claimant left a message with the ISO officer, who worked getting inmates to work, that the employer was repeatedly shortchanging the county jail on the meals it received. The claimant indicated the employer shortchanged the county jail the designated amount of meat that particular day. On June 15, the claimant did not have enough meat to put in the spaghetti.

She stretched out the spaghetti by adding more noodles. The claimant did not record on the production sheet that she ran out of meat and was unable to put all the meat into the spaghetti that the recipe required.

The ISO officer contacted the employer about the claimant's phone message. Richardson and Bloomer listened to the message the claimant left for him. Upon reviewing the production sheets, the employer discovered the claimant had extra spaghetti leftover on June 15. Based on the information on the production sheet, the employer concluded the claimant gave the client false information. Additionally, when the claimant failed to notify the employer about the meat shortage, she bypassed the employer's management and went directly to the client with the problem. The employer talked to the claimant on June 17 and told her they would investigate the matter.

The claimant became ill and was unable to work after June 17, 2009. On June 29, 2009, the employer discharged the claimant for contacting a client and providing a false statement to the client.

The claimant established a claim for benefits during the week of June 28, 2009. The claimant has filed for and received benefits since June 28, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence indicates the claimant was frustrated with her supervisors for failing to do anything about a supplier shorting the employer supplies, meat. The claimant assumed the district manager would not do anything about this either. The claimant based this assumption on her prior experience with other employers. The claimant knew who the district was and how to contact this person because she had contacted the district supervisor about other issues. Even if her supervisors and the district supervisor did nothing about a supplier who shorted the employer meat, the claimant's decision to report this to a client constitutes an intentional and substantial disregard of the employer's interests. Also, if the claimant wanted to make a record of the times she was short meat, she failed to note the meat shortage on any production sheet. The claimant's attempt to take matters into her own hands by contacting the client about

shortages constitutes work-connected misconduct. Therefore, as of June 28, 2009, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's July 30, 2009 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 28, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs