

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**VERONICA RIVAS**

Claimant

**TYSON FRESH MEATS INC**

Employer

**APPEAL NO. 14A-UI-06314-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/18/14**

**Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 10, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 11, 2014. Claimant participated personally. Employer participated by Kristi Fox. Spanish Interpretation was provided for the claimant in this matter by Anna Pottebaum.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 22, 2014. Employer discharged claimant on April 22, 2014 because claimant allegedly did not have current paperwork allowing her to continue to work in this country. Employer had notified claimant approximately a month before this date to alert her that she needed to update her certification to work card prior to April 22, 2014.

Claimant let employer know that she was proceeding forth with the documents needed for allowing her to continue employment. When claimant was unable to get her approval by April 22, claimant was immediately separated from her job. She was given 30 days to regain her job with full benefits by providing current paperwork. Claimant was unable to provide the necessary paperwork within the given time frame through no fault of her own. Claimant had begun the filing for the updated paperwork months in advance of being given notice by employer, but the government hadn't returned the certification of claimant's ongoing ability to work in the United States in a timely fashion.

## REASONING AND CONCLUSIONS OF LAW:

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.

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. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4), (8) provides:

(4) Report required. The claimant's statement and the 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning renewal of her certification of ability to work. Claimant was not warned concerning this policy but she knew that she needed to update her certification.

The incident which brought about the discharge fails to constitute misconduct because there has been no showing of a willful misconduct on the part of claimant. Rather, claimant had attempted for months prior to the April 22 date in question to get recertified for ongoing work. Through no fault of her own, the government had not produced the documentation. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated June 10, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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