

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURIE ROMERO

Claimant

APPEAL NO. 09A-UI-17769-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSCEOLA FOODS CORPORATION

Employer

OC: 10/25/09

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Laurie Romero, filed an appeal from a decision dated November 19, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 6, 2010. The claimant participated on her own behalf. The employer, Osceola Foods, participated by Human Resources Manager Aaron Peterson.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Laurie Romero was employed by Osceola from March 31, 2008 until October 29, 2009 as a full-time quality control auditor. She received the most recent employee handbook on January 6, 2009. Section Eight of the policies states it is grounds for discharge if an employee leaves work without notice to or permission from a supervisor.

Ms. Romero was scheduled to work 3:15 p.m. to midnight on October 26, 2009. Around 4:30 p.m. a co-worker reported to Supervisor Gabe Wilson that the claimant was not at her work station. As a quality control auditor her job was critical as she was to take measurements and readings which had to be done at specific times. Failure to do this could cause the employer to be in violation of governmental standards and regulations. The facility was already one person short that day and the claimant's disappearance caused serious problems in getting the quality control auditing done on time.

Mr. Wilson reported the claimant's disappearance to Human Resources Manager Aaron Peterson and he checked the computer records on the entry/exit turnstile. The records showed she had left at 4:30 p.m. Her husband, who also works for the employer, was notified and he was given permission to leave to try and find her. Around 5:45 p.m. both of them returned to the plant and reported to the nurse's office. Mr. Wilson was summoned and both he and the nurse

reported later the claimant smelled strongly of alcohol and was pale and had blood-shot eyes. Mr. Wilson suspended the claimant per Mr. Peterson's orders.

On October 27, 2009, Mr. Peterson interviewed both the claimant and her husband. She said she had gone home to get some migraine medication but did not give any reason for failing to notify her supervisor or the human resources department when she was leaving. She also could not account for an absence of one and one-quarter hours since she lived very close to the facility and it would not have taken her that long to go home and come back.

Mr. Peterson continued the claimant's suspension and then interviewed her husband who said he had gone home and found her drinking a glass of water. The interview with the nurse and Mr. Wilson revealed the report of a strong alcohol smell. The decision was made to discharge the claimant but Mr. Peterson was unable to reach her by phone on October 28, 2009, but on October 29, 2009, he did contact her and ask her to come to the facility. When she arrived she was discharged.

REASONING AND CONCLUSIONS OF LAW:

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 claimant knew of the policy which calls for discharge of any employee who leaves work without notice to a supervisor. Her explanation of going to get her migraine medication sounds reasonable on the surface but a closer examination finds weaknesses in that story. She

maintained she was just going home to get her medication and lived only five minutes away from work. This does not explain an absence of one and one-quarter hours. It also does not explain why she would have left the employer's property without first notifying a supervisor or human resources, and why she did not punch out since she would not be working during that time. She was not on any authorized break.

The record establishes the claimant left work for an extended period of time without permission from a supervisor and without punching out. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of November 19, 2009, reference 01, is affirmed. Laurie Romero is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs