

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LYDIA L KPOR
Claimant

HORMEL FOODS CORPORATION
Employer

APPEAL 15A-UI-12285-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/11/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Lydia Kpor (claimant) filed an appeal from the November 2, 2015 (reference 01) unemployment insurance decision that denied benefits based upon the determination Hormel Foods Corporation (employer) discharged her for dishonesty in connection with her work. The parties were properly notified about the hearing. A telephone hearing was held on November 23, 2015. The claimant participated on her own behalf and was represented by her cousin, Jack Walker. The employer participated through Human Resources Manager Frank Velazquez and was represented by Jerry Sander of Employers Unity, LLC. Claimant's Exhibit A was received. Employer's Exhibit 1 was received.

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 full time as a Pillow Pack 23 Boxer beginning on January 5, 2015 and was separated from employment on September 28, 2015; when she was discharged. As part of her job duties, the claimant was responsible for performing a quality check every half hour when working on the inside of the line to make sure the meat products were properly sealed. The quality check was to be documented on the form supplied by the employer.

On the night of the shift that started on September 21, 2015, the claimant went to break after the 1:00 a.m. check. She was working the inside position that night. She failed to complete any further checks that evening. The supervisor became aware of the situation at 2:37 a.m. He reminded the employees on the line that the checks needed to be completed and informed them that they would be receiving written warnings for failing to complete the checks. The supervisor made copies of the documents. At 3:11 a.m., it came to the supervisor's attention that the documents had been altered and now included checks conducted between 1:00 a.m. and 2:37 a.m. The claimant's initials were listed next to most of the checks.

An investigation was conducted. The claimant acknowledged she did not perform any checks after 1:00 a.m. but denied she had altered the documents. Another employee told the employer that she witnessed the claimant altering the documents. The employer determined the claimant had falsified the documents and discharged her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible. The employer provided some documents to support its version of events. Additionally, the claimant, during her testimony when being questioned about the falsified documents, denied completing the 1:00 a.m. check; when she had initially testified that she had completed that check. The initials on the falsified documents do appear to be very similar to the initials on the checks that the claimant did complete that evening.

Workers in the human food production and processing industry reasonably have a higher standard of care required in the performance of their job duties to ensure public safety and health. The employer has established quality checks as a way of ensuring public safety and health. The claimant falsified documents which led to a breakdown in trust that she was adequately performing the required work to keep the public safe. The claimant's conduct indicates a deliberate disregard for the employer's interest and is misconduct without prior warning. Accordingly, benefits are denied.

DECISION:

The November 2, 2015 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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