

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUANN LOEB
Claimant

APPEAL NO. 10A-UI-09561-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 05/16/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Luann Loeb filed a timely appeal from an unemployment insurance decision dated June 24, 2010, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held on August 17, 2010, with Ms. Loeb participating. Senior Human Resources Clerk Gwen Timmerman participated for the employer, Tyson Fresh Meats, Inc. Claimant Exhibit A was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Luann Loeb was a production worker for Tyson Fresh Meats, Inc. from February 23, 2009, until she was discharged May 14, 2010. When Ms. Loeb was hired, she went through an orientation, including the company's code of conduct. Theft from the company or from a coworker is a violation of that policy and will lead to discharge. On May 12, 2010, Ms. Loeb took a piece of equipment belonging to a coworker. When confronted, she initially denied having taken the item. She later returned the item to its owner with her apologies. She was discharged for this.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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 acknowledged in her testimony that she knew that what she had done was wrong. Regardless of her depression medication, the claimant knew right from wrong. Even so, she took property that she knew did not belong to her. This is sufficient to establish misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated June 24, 2010, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw