

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADUK A JUACH

Claimant

APPEAL NO. 12A-UI-08549-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 06/03/12

Claimant: Appellant (2-R)

Iowa Code Section 96.5(2)(a) – Discharge

STATEMENT OF THE CASE:

Aduk Juach filed a timely appeal from the July 5, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 9, 2012. On that date, Eloisa Baumgartner represented the employer and presented additional testimony through Alfredo Robles. Claimant Aduk Juach did not participate on August 9, 2012. Exhibit One was received into evidence. Ms. Juach contacted the administrative law judge after the hearing record had closed and provided good cause to reopen the hearing record. On September 4, 2012, the administrative law judge attempted to go forward with the hearing, but had to abandon that process after it became clear that the claimant did not speak the same dialect as the Dinka-English interpreter secured for the hearing. The employer was not available on September 4, 2012 and did not participate on that date. On September 27, 2012, the hearing concluded. Ms. Juach participated. Eloisa Baumgartner represented the employer. Dinka-English interpreter Magok Alim assisted with the hearing.

ISSUE:

Whether Ms. Juach separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Aduk Juach is an African immigrant whose native language is Dinka. Ms. Juach has very limited English skills. Ms. Juach was employed by Tyson Fresh Meats as a full-time production worker from 2006 and last performed work for the employer on Friday, May 25, 2012. Ms. Juach's regular work hours were 6:00 or 6:30 a.m. to 3:00 p.m. Ms. Juach's immediate supervisor was Alfredo Robles. As of May 25, 2012, Ms. Juach was seven months pregnant. On May 25, Ms. Juach worked until noon. Around 11:00 a.m., Ms. Juach had returned from break and Mr. Robles assigned her to a particular job on the production line. The work required that Ms. Juach turn large pieces of meat from side to side. The work required that Ms. Juach lean forward and put pressure on her abdomen. Ms. Juach was unable to perform the work to Mr. Robles' satisfaction due to her advanced pregnancy. Mr. Robles approached Ms. Juach at the production line, took her knife and told her to leave if she could not do the work. Ms. Juach

told Mr. Robles that she could not do the task by herself and asked to be assigned to a different area. Mr. Robles refused to assign Ms. Juach to perform a different task. Ms. Juach stood by for 45 minutes until Mr. Robles sent someone to tell her to leave immediately. Ms. Juach did not want to leave. After a while another person directed Ms. Juach to surrender her employee ID badge. Ms. Juach did as directed. Even after surrendering her ID badge, Ms. Juach continued to stand by because she did not wish to leave. Mr. Robles went to Ms. Juach and told her again to leave. Ms. Juach complied.

Before Ms. Juach left on May 25, 2012, she went to speak with the office manager. Ms. Juach requested to speak with the office manager, but he told her he had a meeting to get to and did not have time to speak with her. Ms. Juach then left the workplace as previously instructed.

Over the following weekend, Ms. Juach went to the doctor due to complications with her pregnancy. The doctor instructed Ms. Juach to remain off work for a few days.

On Monday, June 4, 2012, Ms. Juach attempted to return to work. Ms. Juach took a doctor's note to the company nurse, who told Ms. Juach that Ms. Juach had a medical condition and that the company could not allow Ms. Juach to return to the production line. Ms. Juach had been diagnosed with diabetes. It is unclear whether it gestational diabetes or some other form of diabetes.

Two months before her last day, Ms. Juach had provided the employer with a doctor's note indicated she needed a change in duties due to complications related to her pregnancy. The employer had not changed her duties.

Though Ms. Juach did not ask for or apply for a leave of absence, the employer sent Ms. Juach correspondence indicating that employer deemed her to be on a medical leave of absence. On June 27, 2012, Alberto Olguin, Human Resource Manager, sent Ms. Juach a letter that said she had been on a medical leave of absence since May 28, 2012 and was authorized to continue on the leave through July 2, 2012. The letter indicated that if Ms. Juach failed to return on that date, and if the leave had not been extended, the employer would remove her from the employment rolls. Ms. Juach received the letter, but did not respond to it. The employer subsequently unilaterally extended the purported leave of absence to August 31, 2012.

Ms. Juach gave birth to her baby on July 20, 2012. When Ms. Juach received another letter from the employer, she contacted Mr. Olguin in response to the letter. Mr. Olguin asked why Ms. Juach was calling him. Mr. Olguin said he would call Ms. Juach back, but then did not make further contact with her.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

The weight of the evidence fails to support the employer's assertion that Ms. Juach voluntarily quit the employment or that she voluntarily commenced a medical leave of absence at the end of May 2012. The evidence indicates instead that Mr. Robles discharged Ms. Juach from the employment effective May 25, 2012 because she was not able to perform to the employer's satisfaction due to her pregnant condition. Mr. Robles directed Ms. Juach to leave and required that she surrender her employee ID badge. The conduct between the parties subsequent to May 25, 2012 did not alter the fact that Mr. Robles had discharged Ms. Juach on May 25. In any event, Ms. Juach subsequently attempted to return and the employer told her she could not. The employer then disingenuously acted as if Ms. Juach had requested and been approved for a leave of absence when she had not requested a leave or indicated a desire to stop working.

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 employer has the burden of proof in a discharge matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence fails to establish any misconduct on the part of Ms. Juach. The discharge was for no disqualifying reason. Ms. Juach is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The Agency representative's July 5, 2012, reference 01, decision is reversed. The claimant was discharged on May 25, 2012 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

This matter will be remanded to the Claims Division for determination of whether the claimant has been able to work and available for work since she established her claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs