

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIONICIA RAMIREZ
106 LEANDER ST TRLR 51
ALTA IA 51002-1032**

APPEAL NO: 09A-UI-16401-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**TYSON FRESH MEATS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIONICIA RAMIREZ
Claimant

APPEAL NO: 09A-UI-16401-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 09/20/09
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's October 14, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on January 7, 2010. The claimant participated in the hearing. Ike Rocha interpreted the hearing. The employer responded to the hearing notice, but was not available for the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in 2005. The claimant quit and was rehired in 2006.

On September 12, 2009, the claimant went to her supervisor to report problems between herself and another employee, Dora. Dora had been making comments about the claimant and her boyfriend that the claimant considered offensive and inappropriate. The claimant understood her supervisor could not resolve employees' personal issues.

One of the employer's interpreters, who was also a friend of Dora, reported that the claimant threatened to drag Dora. The claimant actually told Dora that if she came to the claimant's residence to stalk her, she would drag her. When the claimant made this comment she was very upset with Dora. When the claimant and Dora were in the supervisor's office, the claimant was very upset. The employer concluded the claimant threatened a co-worker and discharged her for her September 12 conduct.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the claimant's testimony, the employer discharged her business reasons. The evidence presented during the hearing does not establish that the claimant committed work-connected misconduct. Since the claimant's comment to drag Dora was conditioned on whether Dora stalked the claimant at her home, this comment does not rise to the level of work-connected misconduct. Therefore, as of September 20, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's October 14, 2009 decision (reference 01) is affirmed. The employer discharged the claimant but did not establish that she committed work-connected misconduct. As of September 20, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css