

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OLGA O GALCHENKO
Claimant

APPEAL NO: 11A-UI-08163-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY LLC
Employer

OC: 04/0311
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 8, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Laura Althouse appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in May 2008. She worked full time. The claimant understood the employer did not allow employees to hit, strike or slap co-workers at work.

On October 26, 2010, the claimant was in the lunch room and had put her food in the microwave. While waiting for her food, a co-worker was talking to another co-worker. The co-worker was excited and was waving his hands. The co-worker almost hit the claimant while he was talking. So he did not hit her and to protect herself, the claimant grabbed or slapped the co-worker's arm or hand. The claimant's actions upset the co-worker and he swore at her. The claimant and co-worker may have had a brief verbal confrontation. The co-worker reported to the employer that the claimant slapped him.

The employer asked both employees to go home for the rest of the day. After completing an investigation, the employer concluded the claimant violated the employer's policy when she slapped or grabbed a co-worker's arm. The employer discharged the claimant on November 7, 2010. The other employee may have been disciplined, but he was not discharged.

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, she did not intentionally violate the employer's policy. Instead, she grabbed at or slapped at a co-worker's arm because she felt he was going to inadvertently hit her while he was waving his hand when talking to someone else. The claimant used poor judgment when she did not just back up away from the co-worker so she would not get hit. The evidence does not, however, establish that she committed work-connected misconduct. As of April 3, 2011, the claimant is qualified to receive benefits.

The administrative record revealed that this separation had been previously decided on December 9, 2010 (reference 04). The December 9 determination held the claimant qualified to receive benefits because she had been discharged for nondisqualifying reasons. The employer did not appeal that determination. As a result, this appeal should not have been set up on the employment separation, but instead whether this matter had been previously adjudicated.

DECISION:

The representative's June 8, 2011 determination (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. The employer did not appeal that determination. As of April 3, 2011, the claimant remains qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css