

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

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**Appeal Number: 06O-UI-06724-SW
OC: 02/26/06 R: 02
Claimant: Respondent (1)**

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 the **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.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 14, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A hearing was held on August 8, 2006, in Des Moines, Iowa. The claimant participated in the hearing with her representative, Nate Boulton, attorney at law. Cheryl Hughlette participated in the hearing on behalf of the employer. Exhibits One, Two, and Three were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a production laborer from July 14, 1998, to February 24, 2006. The claimant was warned on June 8, 2005, for leaving work before the end

of her shift. She was warned on June 14 and July 11, 2005, for arguing with supervisors. She received a final warning for workmanship on February 10, 2006, for not properly vacuuming hog carcasses, which caused them to be rejected as contaminated. She received extra training after the warning and more light was brought to her work area after she complained that she had difficulty performing her job due to the lighting.

Her assigned job at the time her employment ended was operating the steam vacuum. Her job was to vacuum the rear areas of the hog carcasses as they moved past her on a rail to remove small specks of fecal matter. She was not required to vacuum carcasses that had been marked as being defective, which would be railed off the production line. She was also not required to vacuum carcasses with large amounts of fecal matter near the bung area. Instead, she was to notify the trimmers about those carcasses so they could trim those areas to remove the contaminants. The production level on the line was about 800 to 900 hog carcasses per hour in the claimant's work area.

On February 24, 2006, the claimant was vacuuming hogs to the best of her ability and did not deliberately allow carcasses that required vacuuming to pass her. There were several hogs that she determined needed to be trimmed rather than vacuumed because there was fecal matter of an amount beyond what she could vacuum. In those cases, she notified the trimmers that the carcasses had to be trimmed. Quality control personnel reported the claimant was failing to vacuum carcasses she was supposed to vacuum. As a result, the employer discharged the claimant on February 27, 2006, for unsatisfactory work performance.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful or substantial misconduct has been proven in this case. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The employer's evidence consisted entirely of hearsay evidence from individuals who were not at the hearing and subject to cross-examination. The claimant testified credibly that she did not deliberately fail to vacuum carcasses that she was required to vacuum and notified the trimmers if she had carcasses that required trimming instead of vacuuming. Her testimony outweighs the employer's evidence to the contrary.

DECISION:

The unemployment insurance decision of March 14, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/pjs