

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA A GLADE**  
Claimant

**APPEAL NO: 10A-UI-06151-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL KITCHEN SOLUTIONS INC**  
Employer

**OC: 03/21/10**

**Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Cargill Kitchen Solutions, Inc. (employer) appealed a representative's April 13, 2010 decision (reference 01) that concluded Jessica A. Glade (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on June 15, 2010. The claimant participated in the hearing. Greg King appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 3, 2007. She worked full time as a food handler at the employer's Panora, Iowa food production facility for hard cooked eggs. Her last day of work was March 19, 2010. The employer discharged her on that date. The stated reason for the discharge was a repeated incident of serious horseplay after prior warnings.

On March 18 the claimant was involved in an incident where she and two other employees threw some eggs at each other in which she hit at least one coworker with at least one egg. While the other two employees denied throwing the eggs, the claimant admitted she had done so. The claimant had been given verbal warnings for work performance and horseplay in April 2008 and November 2008, as well as a verbal warning for work performance and questionable sanitation procedures in October 2008. She had received a suspension and written warning for work performance and horseplay issues on April 16, 2009. Further, she her performance reviews in June 2008 and June 2009 had referenced concern over her engaging in excessive horseplay.

While the employer tolerated a certain amount of horseplay in the name of positive employee morale, the unwritten rule understood by the employees, including the claimant, was that using or throwing eggs or egg products as part of the horseplay was not unacceptable. The claimant asserted there had been instances she had heard of where other employees or even managers including Mr. King, the senior operations supervisor, had used or thrown eggs or egg products in horseplay, or where other employees had used or thrown eggs or egg products but not been disciplined, but she had no first-hand knowledge of such an incident. Mr. King denied involvement or knowledge of any incident where he or any other member of management had used or thrown eggs or egg product in horseplay. He was not aware of any employees who had been discovered using or throwing eggs or egg product in horseplay who had not been disciplined in some fashion.

The claimant argued that her being discharged for the incident was inequitable since there had been other employees involved as well who were not disciplined. However, the employer maintained that given the claimant's past record of warnings and a suspension for other horseplay issues, the claimant was at a different level of discipline than the other employees, and so discharge was the next necessary level of action.

The claimant established a claim for unemployment insurance benefits effective March 21, 2010. The claimant has received unemployment insurance benefits after the separation.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's throwing of eggs as part of horseplay after multiple warnings and a suspension for horseplay shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's April 13, 2010 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 19, 2010. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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