

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIA I MEJIA GOMES
Claimant

APPEAL 17A-UI-07299-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC
Employer

OC: 06/25/17
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 18, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her discharged for failure to follow instructions in the performance of her job. The parties were properly notified of the hearing. A telephone hearing was held on August 4, 2017. The claimant participated and testified with the assistance of a Spanish language interpreter from CTS Language Link. The employer participated through Site Manager Bruce Barton. Claimant's Exhibits A through C were received into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a laborer from May 2, 2017, until this employment ended on June 22, 2017, when she was discharged. Barton testified claimant was discharged based on a directive he had been given from the employer's corporate office. The corporate office informed Barton they had been instructed by DHS to terminate claimant's employment because she had missed two scheduled appointments. Barton was not sure if DHS stood for Department of Homeland Security or Department of Human Services. Claimant denied she missed any meetings with the Department of Homeland Security. She testified her only scheduled meeting was on April 25, 2017 and she went as instructed. (Exhibit B). Claimant had previously provided Barton with her employment authorization card, which is valid from May 2, 2017 through May 1, 2018. (Exhibits A and C). Barton was not sure what, if any, steps the corporate office had taken to confirm the information they received about claimant was accurate. Claimant spoke with her attorney, who confirmed with United States Customs and Immigration Services that there were no issues with her work authorization and she was legally able to work in the United States. The employer did not supply any documentation to the contrary.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if

the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant was discharged by Barton based on a directive he was given by the corporate office after they purportedly received information indicating they needed to discharge claimant. The employer did not provide any evidence that it took steps to verify this information nor did it provide any documentation showing claimant is not authorized to work in the United States. Claimant provided copies of her work authorization documents and confirmation of attendance at her appointment regarding her work authorization. The employer has not established any misconduct in which claimant engaged, as is its burden. Accordingly, benefits are allowed.

DECISION:

The July 18, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs