

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALMA M MEDINA
Claimant

APPEAL NO: 13A-UI-13212-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 11/10/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Alma M. Medina (claimant) appealed a representative's November 27, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Cargill Meat Solutions Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 19, 2013. The claimant participated in the hearing and was represented by union representative Tim Martin. Angie Stevens appeared on the employer's behalf. Ike Rocha served as interpreter. 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?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on July 8, 2008. She worked full time in the ham department of the employer's Ottumwa, Iowa pork processing facility, working on the first shift. Her last day of work was November 8, 2013. The employer discharged her on that date. The reason asserted for the discharge was allowing someone else to punch her in on the time clock.

On November 8 when the claimant was coming back from lunch, a large group of people were lined up waiting to clock in on the one time clock in that room which was working, as the other time clock was broken. The claimant's boyfriend was near the head of the line, so she gave her time card to him to clock it so that she could step away and out of the crowd. He clocked her in and gave her back her card, and she proceeded to return to her work station. Because she had given her card to someone else to clock her in, she was discharged.

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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 reason cited by the employer for discharging the claimant is her allowing someone else to clock her back in from lunch on November 8. While the employer's policy against having anyone other than the employee clock themselves in, this is obviously to prevent time clock fraud where someone is clocked in even though they are not present; that is clearly not the case in this matter. Under the circumstances of this case, the claimant's allowing her boyfriend to use her card to clock her back in after lunch when she was in the immediate vicinity and did immediately return to her work station was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's November 27, 2013 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs