

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

QUECTSY Z ROSARIO LOPEZ

Claimant

APPEAL NO. 09A-UI-06088-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

OC: 03/22/09

Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (Cargill) filed an appeal from a representative's decision dated April 10, 2009, reference 01, which held that no disqualification would be imposed regarding Quectsy Lopez' separation from employment. After due notice was issued, a hearing was held by telephone on May 15, 2009. Ms. Lopez participated personally. The employer participated by Alicia Alonzo, Human Resources Generalist, and Jordan Weber. The employer was represented by Steve Zaks of Barnett & Associates. Patricia Vargas participated as the interpreter.

ISSUE:

At issue in this matter is whether Ms. Lopez was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Lopez was employed by Cargill from May 17, 2004 until March 25, 2009 as a full-time production worker. She was discharged based on an allegation that she falsified pre-employment information. The employer received an anonymous tip that Ms. Lopez was using false documents. A criminal background check was initiated on March 18 and the results were received on March 23, 2009.

The background check revealed that an individual using the same name and social security number as that used by Ms. Lopez lived in Brooklyn, New York, from March of 2002 until December of 2007. The report also indicated the same name and social security number being used by an individual at Ms. Lopez' Iowa address from April of 2004 until September of 2007. Ms. Lopez was born in Puerto Rico and came to the mainland at age 26. She has lived in Washington, Missouri, New York, and Iowa.

The employer's conclusion that Ms. Lopez had provided false information was based, in part, on the background check. The report contains a disclaimer that the preparer does not guarantee the accuracy or truthfulness of the information provided. The employer's conclusion was also

based on the fact that Ms. Lopez does not have a Puerto Rican accent. Also, she did not appear to be familiar with a Puerto Rican term the employer asked her about. After concluding that she had provided false information, the employer discharged Ms. Lopez on March 25, 2009. The above matter was the sole reason for the termination.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Lopez was discharged because the employer believed she had provided false information regarding her identify. Although the information provided by the employer raises questions, it is far from conclusive.

Ms. Lopez worked for Cargill for five years. During that time, there were no questions raised by the Social Security Administration (SSA) regarding the validity of the social security number she was using. If the same number was being used in Iowa and in New York in 2007, one would think it would raise a red flag with SSA. The employer did not work with SSA to determine the history of the number being used by Ms. Lopez. It could as easily be someone else using her number in New York as it could be Ms. Lopez using someone else's number in Iowa.

The fact that Ms. Lopez does not have the accent expected by the employer is not conclusive. Nor is the fact that she was unfamiliar with a Puerto Rican term she was asked about. She may have been unfamiliar with the term as pronounced by the employer. As stated previously, the testimony from both parties raises questions and generates some doubt concerning Ms. Lopez' identity. However, the evidence is not so definite as to permit a conclusion that she did, in fact, provide false information. Since the employer had the burden of proving misconduct, any doubt will be resolved in Ms. Lopez' favor. For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated April 10, 2009, reference 01, is hereby affirmed. Ms. Lopez was discharged by Cargill but misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs