IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

SANDRA DE CASTILLO Claimant **TYSON FRESH MEATS INC** Employer	**APPEAL NO. 19A-UI-06276-JTT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/14/19** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Sandra De Castillo filed a timely appeal from the August 5, 2019, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. De Castillo was discharged on July 18, 2019 for insubordination in connection with the employment. After due notice was issued, a hearing was held on August 30, 2019. Ms. De Castillo participated personally and was represented by attorney Brody Swanson. Christy Chappelear represented the employer and presented additional testimony through Dallas Benjamin and Melissa Vansyoc. Spanish-English interpreter David Taveras of CTS Language Link assisted with the hearing.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sandra De Castillo was employed by Tyson Fresh Meats, Inc. as a full-time "styler" on the employer's beef production line until July 18, 2019, when the employer discharged her for alleged insubordination. The employment began in 2000. Ms. De Castillo worked as a styler during the final 12 years of the employment. As a styler, Ms. De Castillo arranged pieces of meat on foam meat trays as part of Tyson's packaging of products to be sold in Walmart stores. Ms. De Castillo was required to follow Tyson and Walmart specifications. These included excluding discolored pieces and "wedge cuts", removing bone dust, and arranging the meat pieces in the standardized configurations.

Ms. De Castillo's usual work hours were 7:30 a.m. to about 4:15 p.m. Ms. De Castillo would receive two scheduled breaks. Ms. De Castillo received a 15-minute break at 10:15 a.m. and a 30-minute break at 1:15 p.m. If Ms. De Castillo needed to leave the production line at other times, the employer's policy required that she first get permission from a supervisor.

During the last two to three years of the employment, Production Supervisor Dallas Benjamin was Ms. De Castillo's immediate supervisor. Ms. De Castillo and Mr. Benjamin had a tempestuous work relationship that led to Ms. De Castillo making repeated complaints to the employer about Mr. Benjamin. Ms. De Castillo made several complaints about Mr. Benjamin during the last two months of the employment. Ms. De Castillo is a native Spanish speaker and has limited English language skills. Mr. Benjamin does not speak Spanish. The language barrier contributed to the interpersonal strife between Mr. Benjamin and Ms. De Castillo.

Ms. De Castillo had ongoing health issues that necessitated reasonable workplace accommodations. Ms. De Castillo's health issues included frequent right shoulder and right bicep pain that prompted Ms. De Castillo to make frequent trips to the plant's health services personnel. Ms. De Castillo's shoulder and arm pain made it especially important for her to rotate her position on the production line to minimize overuse concerns. The employer's established protocol called for employees to be rotated to a different position following each break. Toward the end of the employment, the employer provided Ms. De Castillo with a stool to sit on while she performed her work. The employer did so in response to a note from Ms. De Castillo's doctor.

The final incident that triggered the discharge occurred during Ms. De Castillo's shift on July 17, 2019. On that day, Ms. De Castillo returned to the production area following her break, spoke the Line Lead, Julio, regarding where she should commence working, and then returned to the position she had been working in before she went on break. In other words, Ms. De Castillo did not rotate to a new position on the production line. Shortly thereafter, Mr. Benjamin indelicately directed Ms. De Castillo to go work in a different area. Ms. De Castillo did not want to move to the new area because the work at that station was one of the more difficult assignments on the production line. Ms. De Castillo knew that she was scheduled to work in that same more difficult assignment the following day and was concerned about performing the more physically challenging work two days in a row. Ms. De Castillo believed that two days at the physically demanding station would increase the pain in her right arm and shoulder. When Ms. De Castillo mentioned this concern to Mr. Benjamin, he told her not to worry about the next day. Mr. Benjamin did not share with Ms. De Castillo that he planned to have her work in a different area the next day. Ms. Castillo perceived Mr. Benjamin's directive and his comment about not worrying about the next day to be an expression of indifference regarding her health issues and wellbeing. Ms. Castillo tried to express her concern in Spanish, but Mr. Benjamin did not understand what she was saying. Ms. De Castillo then left the production area in an upset state and went to find Mr. Benjamin's boss, Ruben Acosta, General Foreman. Ms. De Castillo did not get permission before she left the production line. Even though Ms. De Castillo's next break was not for another three hours, Mr. Benjamin expected her to perform the assigned work until then and wait until the next break to speak with human resources or with Mr. Acosta about her concern. Mr. Benjamin got the production line caught up, left the Line Leader in charge, and then went looking for Ms. De Castillo. Ms. De Castillo had Mr. Acosta paged, but did not get to speak with Mr. Acosta. Mr. Benjamin located Ms. De Castillo in the hall near the human resources office and directed her to return to the production line or go home. Ms. De Castillo complied with the directive and returned to the production line and new position to which Mr. Benjamin had assigned her. Ms. De Castillo had been away from the production line for no more than 10 minutes.

Ms. De Castillo continued to be emotionally upset by the new assignment and was crying at her work station when Christy Chappelear, Human Resources Manager, went to the production line to follow up on the matter. Ms. Chappelear and Mr. Acosta then met with Ms. De Castillo in the human resources office with the assistance of an interpreter. Ms. De Castillo explained her

concern with the production line placement, her frustration with Mr. Benjamin, and her decision to leave the production line to seek out and speak with Mr. Acosta.

On July 18, 2019, Ms. Chappelear met with Ms. De Castillo for the purpose of issuing a written warning to Ms. De Castillo based on the July 17 incident and for the purpose of discharging her from the employment for accumulating too many written warnings.

The final incident followed closely behind another incident and reprimand on July 16, 2019. On that day, Ms. Castillo balked when Mr. Benjamin tried to add additional duties to her work styling duties. Mr. Benjamin directed Ms. De Castillo to work in a spot on the production line where trays were jamming up due to a reconfiguration of the production line. Mr. Benjamin was having stylers take turns at that particular spot of the production line until the line could be reconfigured to eliminate the jamming. Other stylists had taken their turn at that spot. When Mr. Benjamin directed Ms. De Castillo to take a turn at that spot and to watch for jamming, Ms. De Castillo refused to perform the additional work because there were only two stylers working in the area and she believed she had enough work to perform already. Ms. De Castillo asserted that the additional work was not part of her job. Ms. De Castillo briefly left the production line. Mr. Benjamin met with Ms. De Castillo with the assistance of an interpreter. After Mr. Benjamin explained through the interpreter the temporary problem with the configuration of the production line, Ms. De Castillo returned to the production line and performed the duties as assigned. Later in the shift Mr. Benjamin met with Ms. De Castillo with the assistance of an interpreter for the purpose of issuing a written reprimand. The employer alleges that Ms. De Castillo stated during that meeting, through an interpreter, that she would throw her hard hat at Mr. Benjamin, but that she wanted to keep her job. Ms. De Castillo asserts that she actually said that she was tired of all the things Mr. Benjamin was doing, that he was not being fair, and that if she did not need the job she would hand him her hard hat so that he could be happy that he kicked her out. The employer asserts, and Ms. De Castillo concedes, that she told Mr. Benjamin to eat the write up.

The employer considered two earlier unrelated matters and associated reprimands when making the decision to discharge Ms. De Castillo from the employment. On November 21, 2018, Mr. Benjamin issued a written reprimand to Ms. De Castillo for allegedly placing wedge cuts on meat trays. Neither Mr. Benjamin nor Ms. De Castillo recall the details of that incident. On June 4, 2019, Mr. Benjamin issued a written reprimand to Ms. De Castillo and another styler after one of them placed wedge cuts on one or more meat trays. The employer was not certain which of the two stylists placed the wedge cuts on the tray. Mr. Benjamin does not recall the details of the incident.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
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> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
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> a. The disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(1)(a) provides:

> Discharge for misconduct.
>
> (1) Definition.
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> 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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board,* 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

Threats of violence in the workplace constitute misconduct that disqualifies a claimant for benefits. The employer need not wait until the employee acts upon the threat. *See Henecke v. Iowa Dept. Of Job Services,* 533 N.W.2d 573 (Iowa App. 1995).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. *Deever v. Hawkeye Window Cleaning, Inc*. 447 N.W.2d 418 (Iowa Ct. App. 1989).

The weight of the evidence in the record establishes a discharge for no disqualifying reason. The evidence fails to establish a continued failure to follow reasonable instructions. The weight of the evidence in the record establishes a level of animosity between Mr. Benjamin and Ms. De Castillo that colored each of their interactions. The language barrier only made things worse. On July 17, 2019, Mr. Benjamin elected to utter a directive that at first glance may not seem unreasonable. However, the directive was uttered indelicately without explanation and without the assistance of an interpreter, though the readily-evident miscommunication required an interpreter to get it resolved. Rather than get the interpreter and tell Ms. De Castillo there and then that he would not have her working in the same more difficult spot the following day, Mr. Benjamin elected to utter the ostensibly flippant, heavy-handed directive not to worry about the next day. Under the circumstances created by Mr. Benjamin, and in the context of Ms. De Castillo's health issues and the ongoing interpersonal conflict, it was not unreasonable for Ms. De Castillo to leave the production line briefly to seek out the assistance of Mr. Acosta and an interpreter. It was unreasonable for Mr. Benjamin to expect Ms. De Castillo to work for another three hours without resolution of her concern. In any event, Ms. De Castillo subsequently complied with the directive after Mr. Benjamin told her she had to choose between following the directive and going home. The weight of the evidence also fails to establish an unreasonable refusal to follow a reasonable directive on July 16, 2019. Once again, Mr. Benjamin directed Ms. De Castillo to perform more difficult work without reasonable and appropriate explanation. Under the circumstances created by Mr. Benjamin, Ms. De Castillo balked. Once Mr. Benjamin secured the interpreter and explained the situation, Ms. De Castillo complied with the directive. Given the circumstances created by Mr. Benjamin on both dates, Ms. De Castillo's brief absence from the production on either date was not unreasonable and did not constitute insubordination within the meaning of the law.

The weight of the evidence fails to support the employer's assertion that Ms. De Castillo threatened Mr. Benjamin during the disciplinary meeting on July 16, 2019 or on July 18, 2019 prior to the being discharged. The employer relies upon the interpreter's interpretation of the July 16 utterance as the basis for concluding that Ms. De Castillo uttered a threat. The employer did not present testimony from the interpreter and did not otherwise present sufficient evidence to rebut Ms. De Castillo's testimony regarding what she said to the interpreter in Spanish. Ms. De Castillo's statement that Mr. Benjamin should eat the write up was disrespectful, but did not rise to the level of a threat or an utterance offensive enough to constitute disqualifying misconduct.

The employer presented insufficient evidence to establish a willful disregard of the employer's interests or a pattern of carelessness and/or negligence indicating a similar level of disregard. Ms. De Castillo had served the employer for 19 years. Ms. De Castillo may not have been an

ideal employee, but the weight of the evidence establishes that she performed her work in good faith and to the best of her ability. The employer presented insufficient evidence to establish carelessness and/or negligence on the part of Ms. De Castillo in connection with the alleged wedge piece incidents from late 2018 and June 2019.

The employer's decision to discharge Ms. De Castillo from the employment was not based on her reaction *after* the employer told her she was discharged from the 19-year employment. Accordingly, that conduct is irrelevant to the administrative law judge's decision-making process.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. De Castillo was discharged for no disqualifying reason. Accordingly, Ms. De Castillo is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The August 5, 2019, reference 01, decision is reversed. The claimant was discharged on July 18, 2019 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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