

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NYAGACH RIEK**

Claimant

**APPEAL NO: 11A-UI-06828-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 04/10/11**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's May 13, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. Susan Pfeifer, the human resource manager, and Margoqueo Roman, the claimant's supervisor, appeared on the employer's behalf. David Puoch interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in November 2000. She worked full time. The claimant transferred to Roman's department in March 2010.

During the last year of her employment, the claimant received five written warnings. The claimant received four of the warnings because she did not work fast enough. When the employer gave her a warning in mid-February 2011 for again not working fast enough or for unsatisfactory job performance, the employer encouraged the claimant to bid for another job.

The claimant bid for another job. She won the bid and tried to do this job. The claimant was not qualified to do the new job and returned to Roman's department.

After the mid-February 2011 warning, the next step in the employer's discipline procedure was termination. On April 7, the claimant was not working fast enough; she was not keeping up with the line speed. On April 8, the employer gave the claimant another written warning and suspended her for unsatisfactory job performance, not working fast enough, and sent her home. On April 11, the employer discharged the claimant for repeatedly failing to perform her job satisfactorily because she did not work fast enough.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2). The facts do not establish that the claimant quit. Instead, the employer discharged her.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts do not establish that the claimant intentionally failed to perform her job satisfactorily. Instead, she was unable to work as fast as the employer required. The employer established justifiable business reasons for discharging the claimant, but she did not commit work-connected misconduct. As of April 10, 2011, the claimant is qualified to receive benefits.

## DECISION:

The representative's May 13, 2011 determination (reference 01) is reversed. The claimant did not quit her employment. Instead, the employer discharged her for business reasons that do not constitute work-connected misconduct. As of April 10, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs