

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESUS CONTRERAS

Claimant

APPEAL 20R-UI-01095-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRESTAGE FOODS OF IOWA LLC

Employer

OC: 05/19/19

Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jesus Contreras (claimant) appealed a representative's December 13, 2019, decision (reference 06) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with Prestage Foods of Iowa (employer). This administrative law judge issued a decision on January 16, 2020, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on February 6, 2020. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 21, 2020. The claimant participated personally. The employer participated by Pamela Webster, Director of Human Resources.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 16, 2019, as a full-time production team member. He signed for receipt of the employer's handbook on September 16, 2019. The handbook states that an employee who does not report his absence from work for three days is considered to have voluntarily quit.

On November 6, 2019, the claimant returned from his lunch break to find a mess. Approximately three-hundred pounds of meat was on the floor. Usually his supervisor, Beatrice Collins, asked him if he needed help with the after lunch break messes he had to clean. On November 6, 2019, she yelled at the claimant to "go". She pointed at the doors. The claimant took about five steps and the supervisor yelled at him again to "go". It was loud enough for everyone to hear. He assumed he was terminated. The claimant went to the locker room and then home. The claimant clocked out at 12:40 p.m. on November 6, 2019. Later, there the

claimant saw a call from the employer on his telephone. He returned the call but no one answered.

The supervisor did not report her actions to the employer. The employer did not investigate why the claimant left and thought he walked off the job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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:

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 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.

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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide eyewitness evidence of job-

related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because he was an eye witness to the events for which the claimant was terminated.

DECISION:

The representative's December 13, 2019, decision (reference 06) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn