

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AGNES EVEDJI

Claimant

APPEAL NO: 14A-UI-04168-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERNATIONAL CASINGS GROUP INC

Employer

OC: 03/30/14

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 17, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 9, 2014 and continued June 13, 2014. The claimant participated in the hearing with Attorney Philip Miller. Her daughter, Stefanie Evedji, was available but did not testify. Jim Duncan, Slaughterhouse Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time laborer for International Casings Group from March 18, 2013 to March 31, 2014. She was discharged for allowing condemned product into the casing room on two occasions within four days.

The employer uses the small intestines of hogs to make polish sausage. The product is inspected by the United States Department of Agriculture (USDA). If the USDA condemns the product it splatters bright blue ink on it. The product is a grayish, white, pink color, as it comes down the viscera line to the casing room where the claimant is the only employee working and the last employee on that line. When she sees the bright blue ink she is expected to allow that product to go through to rendering. If she pulls condemned casings from the line, everything in the casing room must be thrown away and the room must be cleaned and sanitized. The price of pulling condemned casings in the casings room can run into the \$7,000.00 to \$8,000.00 range, based on a similar incident that occurred in 2012 with another employee in the casings room.

On March 24, 2014, the claimant pulled condemned product from the line and the employer was forced to throw away all product in the casings room and clean and sanitize the room. That is considered a terminable offense on the first occasion but the employer chose to give the

claimant a verbal warning and second chance. On March 27, 2014, the claimant again pulled condemned product from the line and the employer had to throw away all other product in the room and clean and sanitize the room at considerable expense. The employer suspended the claimant on that date until Slaughterhouse Manager Jim Duncan returned and reviewed the situation and made the decision to terminate the claimant's employment effective March 31, 2014.

The claimant chose not to testify in the hearing, instead arguing the employer did not meet its burden of proof.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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 claimant's motion seeking dismissal of the case and a directed verdict due to insufficient evidence of misconduct is denied as the employer has established disqualifying misconduct as explained in the following paragraphs. While the employer has the burden of proof, without any

evidence to the contrary, as the claimant chose not to testify and provide any explanation for her actions, even if to say her conduct was unintentional, the administrative law judge must rely on the employer's testimony. The claimant's arguments that the employer has failed to make a prima facie case of misconduct; that the employer only proved insufficiency and neglect but not disqualifying job misconduct; that the employer failed to provide any first-hand testimony; that the employer provided insufficient, contradictory and biased testimony toward the claimant; that the employer's testimony was general and vague; and that the employer violated its own rules by failing to discharge the claimant after the first incident March 24, 2014, are all found unpersuasive.

The claimant pulled condemned product from the viscera line March 24 and 27, 2014. The condemned product is clearly marked with bright blue ink by the USDA inspectors and it is the claimant's responsibility to allow that product to pass through to rendering. If she fails to do so the employer must throw away all of the product in the casings room and clean and sanitize the room. The process is time consuming and extremely costly for the employer. The claimant pulled condemned product March 24, 2014 and although the first incident usually results in termination of employment, the employer decided to give the claimant another chance but she violated the policy again March 27, 2014 and the employer discharged her from employment.

Even if the first incident was inadvertent, without any evidence to the contrary, bearing responsibility for pulling condemned product three days later in violation of the employer's policy, indicates carelessness or negligence of such degree or recurrence as to manifest equal culpability or wrongful intent.

Under these circumstances, and with no testimony from the claimant denying or explaining her actions following the claimant's allegations, the administrative law judge concludes the employer's testimony shows the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The April 17, 2014, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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