

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**ROSELIND J VALENZUELA  
417 DELAWARE AVE SE  
ORANGE CITY IA 51041**

**WELLS DAIRY INC  
PO BOX 1310  
LE MARS IA 51031-1310**

**Appeal Number: 04A-UI-09191-DWT  
OC: 08/01/04 R: 01  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Wells Dairy, Inc. (employer) appealed a representative's August 20, 2004 decision (reference 01) that concluded Roselind J. Valenzuela (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 21, 2004. The claimant participated in the hearing. Becky Wahlberg, the Human Resource Generalist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on January 25, 1999. She worked as a full-time production worker. Chris Weiler was the claimant's supervisor. The claimant received a copy of the employer's policies, which informed her an employee could be discharged for insubordination and the employer expected employees to treat all people with courtesy and respect.

During the course of her employment, the claimant received several reprimands for insubordination or disrespectful behavior. On November 19, 2003, the employer talked to the claimant about using perfume or scented body lotion at work. A co-worker experienced an allergic reaction when the claimant used scented body lotion. The employer concluded the claimant harassed this employee by making a point of going to him after she had used the scented body lotion and made fun of him. The claimant denies she harassed or made fun of the co-worker. The claimant did not use perfume at work and tried to stay away from this co-worker. On February 4, 2004, the employer talked to the claimant about making sure she did not make disparaging remarks about a co-worker's disabled spouse. The employer emphasized the importance that the claimant took responsibility for her actions and remarks.

The claimant worked on July 31, 2004. She was an extra person on a production line and the employer needed her to help on another line. A supervisor, Charles Greer, told the claimant in the break room that she had to report to a different line after her break. She told Greer she did not want to go to the requested production line because she was not fully trained on that line. The employees who worked on that line became upset with co-workers who did not know what they were doing. The claimant made a comment to another person that maybe she should leave and take points like other employees. Greer's response upset the claimant. The claimant left the break room crying. The claimant went to the designated production line crying. After the claimant reported to the production line, she learned she would only work as an extra person and would not have to work all positions. The claimant had no problems doing this and performed the requested work on this line.

After management investigated the July 31, 2004 incident, the employer concluded the claimant's comments and behavior amounted to insubordination. Since the employer had previously talked to the claimant about the way she treated co-workers and this time she was disrespectful to a supervisor, the employer discharged the claimant on August 3, 2004. The employer concluded the claimant again violated the employer's Code of Conduct.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established compelling business reasons for discharging the claimant. The claimant used poor judgment when she told Greer she did not want to go to another production line. Her testimony as to what happened in the break room on July 31, 2004, must be given more weight than the employer's reliance on hearsay information from individuals who did not testify at the hearing. The evidence indicates Greer believed the claimant disrespected him by asking him why she had to go a particular production line. Since the claimant went to the production line and worked as directed, she followed Greer's instructions. Whether or not she was disrespectful toward him is subjective and in Greer's opinion the claimant disrespected him. The facts do not establish that the claimant was intentionally disrespectful. Instead, she was upset when she learned she was to report to this production because she did not believe she was capable of performing all the jobs on that line. The facts do not establish that the claimant intentionally disregarded the standard of behavior the employer has a right to expect from an employee. At the very most she used poor judgment when she questioned Greer as to why she had to go to another production line. The claimant did not commit a current act of work-connected misconduct. Therefore, as of August 1, 2004, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's August 20, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons. These reasons do not, however, constitute a current act of work-connected misconduct. As of August 1, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs