

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

ANTONIA DURAN
618 W 17 ST
DAVENPORT IA 52803-4838

TYSON FRESH MEATS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-07746-DWT
OC: 07/02/06 R: 04
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, 4th 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 is 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's July 24, 2006 decision (reference 01) that concluded Antonia Duran (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 August 21, 2006. The claimant participated in the hearing. Kris Travis, the employment manager, appeared on the employer's behalf. Ike Rocha interpreted the hearing. 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 June 12, 2001. The claimant worked as a full-time employee.

At various times during her employment, co-workers noticed the claimant looking into the white frocks co-workers had momentarily taken off as if to see if she could find anything in the pockets. Co-workers did not report this to the employer until after a June 28, 2006 incident.

On June 28, 2006, an employee, J.Y. reported about 2:45 p.m. that when she went to the women's locker room before she went home she saw that her lock had been taken off her locker and her purse was missing. The employer investigated by looking in all the female employees' lockers. The employer found J.Y.'s purse in the claimant's locker. After finding her purse, J.Y. reported that \$250.00 that had been in her purse was gone.

When the employer talked to the claimant about the purse being in her locker, the claimant admitted she put the purse in her locker. The claimant denied she took anything out of the purse. The claimant explained that around 2:30 p.m. she was in the locker room and noticed the purse on a bench where another employee, L.V., had been sitting. The claimant assumed the purse was L.V.'s so the claimant put the purse in her locker for safekeeping. When the claimant left the locker area she did not say anything to anyone about finding a purse, not even to L.V. When the employer talked to the claimant about the purse incident, the claimant could only identify L.V. as Litty. The employer had no idea who this employee was in late June.

On June 28, 2006, the employer concluded the claimant broke into J.Y.'s locker and removed J.Y.'s purse and the money in the purse. The employer discharged the claimant for stealing from a co-worker.

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 section 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).

The employer established compelling business reasons for discharging the claimant. The employer did not establish that L.V. was not in the locker room with the claimant around 2:30 p.m. If L.V. had been in locker room, it is possible a purse was by a bench and the claimant could reasonably assume the purse was L.V.'s. While the claimant should have reported finding a purse to a lead person or management, it is possible that the claimant put the purse in her locker for safekeeping. While the circumstantial evidence suggests the claimant broke into J.Y.'s locker and took her purse, the claimant's explanation as to why she put the purse in her locker is plausible. As a result, the employer did not establish that the claimant committed work-connected misconduct. Therefore, as of July 2, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 24, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of July 2, 2006, 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