

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA L DEMPSEY
Claimant

APPEAL NO. 10A-UI-11203-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**Original Claim: 07/11/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated August 10, 2010, reference 01, that denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on September 28, 2010. The claimant participated personally. Participating on behalf of the claimant was Elizabeth Norris, attorney at Legal Aid. Appearing as a witness was Will Taylor. The employer participated by Ms. Kris Travis, employment manager. Exhibit One was received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Amanda Dempsey was employed by Tyson Fresh Meats, Inc. from August 21, 2007, until July 14, 2010, when she was discharged from employment. She worked as a full-time production laborer and was paid by the hour.

A decision was made to terminate Ms. Dempsey based upon the employer's belief that the claimant had been the aggressor in a physical confrontation that had taken place at work on July 14, 2010. On that date, Ms. Dempsey was confronted by another employee because of the amount of work Ms. Dempsey was able to do due to her pregnant condition. A verbal exchange escalated and the other worker struck Ms. Dempsey in the abdomen. Ms. Dempsey could not retreat, due to the work location and obstacles in the area, and could not summon a supervisor, as none were present. When Ms. Dempsey attempted to exit, the other worker moved to block Ms. Dempsey's exit in a confrontational way and the claimant struck the other worker to prevent the other worker from again striking the claimant. Ms. Dempsey was pregnant at the time and feared that the physical confrontation would be harmful to her unborn child. The claimant was examined after leaving employment at a medical facility.

Based upon statements from coworkers who were only able to observe a portion of the confrontation, the employer concluded that Ms. Dempsey had been the aggressor, as witnesses were only able to see Ms. Dempsey strike the other worker but not able to see the initial blow that the other worker had struck upon the claimant.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code section 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.

871 IAC 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.

The employer bears the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

The evidence in the record establishes that Ms. Dempsey was not the moving party in causing the confrontation that resulted in her discharge. The claimant testified under oath that she was

initially struck by the other worker and later struck the worker only in self-defense when Ms. Dempsey was unable to exit the area or summon assistance and believed that the other worker was about to strike her again. In support of its position, the employer has offered a number of statements by witnesses. Although hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. The administrative law judge finds the claimant's testimony to be credible and not inherently improbable; therefore, the administrative law judge concludes that the weight of evidence is established in favor of Ms. Dempsey. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated August 10, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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