

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

ANA ORTEGA  
PO BOX 177  
CONESVILLE IA 52739

WEST LIBERTY FOODS LLC  
207 W 2<sup>ND</sup> ST  
PO BOX 318  
WEST LIBERTY IA 52776

**NUNC PRO TUNC**  
**05A-UI-00831-JTT**  
**Appeal Number:**  
**OC: 12/26/04 R: 04**  
**Claimant: Appellant (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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Ana Ortega filed a timely appeal from the January 19, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 10, 2005. Ana Ortega participated in the hearing with the assistance of interpreter Rosie Paramo-Ricoy. Jaime Ruess, Human Resource Manager, represented West Liberty Foods, with witness Derrick Ehlers, Operations Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ana Ortega was employed by West Liberty Foods as a full-time production line worker from July 30,

2001 until December 22, 2004, when Ms. Ruess, Mr. Ehlers, and Operations Manager Chad Schnepfer discharged her for misconduct.

The last incident that prompted the employer to discharge Ms. Ortega occurred during December 21-22, 2004. On December 21, 13 employees walked off one of the plant's meat processing lines because they had not received a break at the time they expected to. Ms. Ortega was not on that particular line. However, Ms. Ortega injected herself into the dispute between management and the employees. As members of management were issuing written reprimands to the 13 employees who had left the line and attempted to restore order, Ms. Ortega advised the employees not to sign anything. Ms. Ortega was instructed to return to her workstation, but refused. Instead, Ms. Ortega pushed her way towards the center of the group, continued to refuse to return to her work area and continued to yell to the other employees that they should not sign anything. Ms. Ortega's interference escalated the already tense situation, which at that point involved dozens of employees. The plant does not have a union and Ms. Ortega is not a union steward.

On December 22, Ms. Ortega was summoned to a meeting with Ms. Ruess, Mr. Ehlers and Mr. Schnepfer. Ms. Ruess intended to issue a written reprimand to Ms. Ortega based on her actions of the previous day. The management team summoned an interpreter from the Human Resources Department to assist with the meeting. Ms. Ortega refused to cooperate with the meeting, became belligerent, advised the management team that she was "just going back to work," and attempted to walk out of the meeting. Ms. Ortega refused to sign the written reprimand despite repeated requests and despite being advised that she would be discharged if she did not sign the reprimand. At that time, the management team discharged Ms. Ortega.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Ortega was discharged for misconduct in connection with her employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since Ms. Ortega was discharged, the employer has 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 is not necessarily serious enough to warrant a 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 Ct. App. 1992). Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence indicates that on December 21, 2004, Ms. Ortega acted with willful and wanton disregard of the employer's interests by injecting herself into a dispute between management staff and a group of employees. Not only did Ms. Ortega act against the employer's interests, but she also attempted to incite her co-workers to act against the employer's interests. Ms. Ortega's escalation of a tense situation increased the risk that the situation would become violent. The evidence indicates that Ms. Ortega engaged in insubordinate behavior when she repeatedly disregarded management's repeated instructions to return to her work area. The employer had every right to restore order to the workplace. The employer had every right to expect Ms. Ortega to refrain from interfering in the discipline of other employees. The employer had every right to expect Ms. Ortega to do the work she was paid to do and to follow the instruction to return to her workstation. The evidence indicates that Ms. Ortega engaged in additional insubordinate behavior on December 22, when she refused to cooperate with management's attempt to reprimand her and escalated that situation to the point where management felt compelled to discharge her.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Ortega was discharged for misconduct. Accordingly, a disqualification will enter.

DECISION:

The Agency representative's decision dated January 19, 2005, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance.

jt/kjf/tjc