

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUANA A NEGRETE
Claimant

APPEAL NO. 14A-UI-09488-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**
Employer

**OC: 08/17/14
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Juana Negrete (claimant) appealed a representative's September 5, 2014 (reference 01) decision that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Cargill Meat Solutions Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 2, 2014. The claimant participated personally through Ike Rocha, Interpreter. Brian Ulin, Union Representative, testified for and represented the claimant. The employer was represented by Francis Landolphi, Hearings Representative, and participated by Martha Gutierrez, Human Resources Associate. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 25, 2011 as a full-time loin bag worker. The claimant signed for receipt of the employer's handbook on July 26, 2011. The attendance policy changed on April 16, 2012. The employer has no knowledge whether the claimant signed for receipt of the new policy. The new policy states that an employee may be terminated for accumulating nine attendance points in one calendar year. The claimant was absent one time in 2014. She properly reported her absence on August 11, 2014 to take her children to the doctor for their physicals. She accumulated one attendance point. The last time she was absent was on September 24, 2013. The employer terminated her on August 18, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's September 5, 2014 (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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