IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JODY SPRAGLE
610 WASHINGTON ST
DENVER IA 50622-9533

BEEF PRODUCTS INC
891 TWO RIVERS DR
DAKOTA DUNES SD 57049-5150

APPEAL NO: 09A-UI-15498-E

ADMINISTRATIVE LAW JUDGE DECISION

APPEAL RIGHTS:

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:

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.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.
A reference to the decision from which the appeal is taken.
That an appeal from such decision is being made and such appeal is signed.
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.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JODY SPRAGLE
Claimant

BEEF PRODUCTS INC
Employer

APPEAL NO: 09A-UI-15498-E

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09-20-09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 8, 2009, reference 03, decision that denied benefits. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on February 1, 2010. The claimant participated in the hearing. Rick Wood, Human Resources Manager and Jen Shafer, Human Resources Intern, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time quality assurance inspector for Beef Products from September 1, 2009 to September 14, 2009. The claimant worked third shift from 9:00 p.m. to 6:00 a.m. On Friday, September 10, 2009, the claimant called the employer and stated she would not be in due to illness. She started her menstrual cycle and the first day of her period is always very difficult for her and she generally is unable to work that one day and needs to use the restroom several times. She had been denied use of the restroom two or three times previously and her job in the lab was four to four and one-half minutes from the restroom. She called Jen Shafer, Human Resources Intern, September 12, 2009, and reported that her supervisor told her she needed a doctor's excuse but the claimant refused to get one because she did not have insurance yet, it was the weekend so she thought she would have to make an expensive trip to the emergency room for something that happened every month and did not require medical attention but rather time, and she found the request unnecessary. Additionally, she knew she would face the same problem every month and could receive enough attendance points because she did not want to, and could not afford to, go to the doctor each month and that would result in a conduct warning eventually leading to her termination. She also felt the job was physically harder than she was used to or expected. Ms. Shafer told her if her supervisor requested a note she needed to get one and management level employees must provide a doctor's note for any absence due to illness. Ms. Shafer also suggested she go to a

local clinic rather than the emergency room but the claimant said she was not going to the doctor and would have to hold off until she found other employment. Ms. Shafer reported the incident to Human Resources Manager Rick Wood and stated the claimant was questioning why she had to bring a doctor's excuse. She also told Mr. Wood the claimant said she was going to have to look for other employment. Mr. Wood met with the quality assurance supervisor and they decided to suspend the claimant until they found out what she meant about seeking other employment. She reported for work September 11, 2009, but was suspended pending a further investigation of the incident and was told to report to work September 14, 2009. On that date the parties met and Mr. Wood asked the claimant what she meant about seeking other employment and the claimant said, "I'm going to have to quit today because this job is a lot harder than I ever thought it would be and I can't do this type of work." The claimant also stated Mr. Wood did not do a good job during the interview process of explaining what the job would actually be. She further stated she was not physically able to do the job and that was not fair to the company or herself. The claimant told the employer she would be looking for another job because the job was not for her and it was too physical and she was not able to perform that job at all. She did not plan to quit at that time and might have stayed permanently once she got used to the job but felt forced out by the employer when it decided she could quit or be terminated and the claimant decided it would look better if she quit her job (Employer's Exhibit One and Two).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 has the burden of proving disqualifying misconduct. 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 substantial and 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). A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct. 871 IAC 24.32(5). The work was physically more difficult than the claimant anticipated or was led to believe during the interview process. The claimant indicated she could not do that type of work and it was not fair to herself or the employer. Additionally, because her menstrual cycle left her physically unable to perform her job one day a month she could not meet the employer's attendance standards and her employment would have been terminated shortly because of her absences due to properly reported illness as she could not afford to go to see a physician, without insurance, every time she started her period and the employer has not demonstrated a good cause reason for that requirement under these circumstances. The claimant was suspended and then forced to resign or face termination. That situation is considered a termination under Iowa law. Under the specific facts of this case, the administrative law judge must conclude that the claimant's termination from employment was not for any good cause reason as defined by Iowa law as her last absence was due to a properly reported illness. Therefore, benefits are allowed.

DECISION:

The October 8, 2009, reference 03, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

_____
Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/css