

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA S SALAS

Claimant

APPEAL NO. 10A-UI-15371-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS

Employer

OC: 10/03/10

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, West Liberty Foods, filed an appeal from a decision dated October 28, 2010, reference 01. The decision allowed benefits to the claimant, Maria Salas. After due notice was issued, a hearing was held by telephone conference call on December 22, 2010. The claimant participated on her own behalf. The employer participated by Human Resources Supervisor Monica Dyar and Human Resources Manager Jean Spiesz.

ISSUE:

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

FINDINGS OF FACT:

Maria Salas was employed by West Liberty Foods from December 26, 2005 until October 7, 2010 as a full-time human resources clerk. On September 29, 2010, an employee reported to Human Resources Supervisor Jean Spiesz that Ms. Salas had revealed personal information about her to another employee, a trainer. Around the same time, a production supervisor, who was the "significant other" to the trainer, notified personnel in the human resources department that he had seen text messages from Ms. Salas to the trainer about the other employee and asked if this was appropriate.

Ms. Speisz and Human Resources Director Tara Lindsay investigated the matter. Copies of the e-mails were retrieved by the IT department by Ms. Lindsay and Ms. Spiesz translated them, as they were in Spanish. The messages informed the trainer of the other employee's phone number and her attendance record.

The claimant was notified on October 7, 2010, about the results of the investigation. The claimant admitted to sending the other employee's attendance information to the trainer and did not deny she sent the phone number. She did not know why the trainer wanted the information and told Ms. Lindsay she should ask that person directly.

The claimant was discharged for revealing confidential, personal information to another employee about a third employee. This is a violation of a stated policy in the employee handbook, which further states violation of that policy is grounds for discharged.

Maria Salas has received unemployment benefits since filing a claim with an effective date of October 3, 2010.

REASONING AND CONCLUSIONS OF LAW:

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 claimant was discharged for violation of a known company policy. She revealed confidential information, to which she had access as a part of her job duties, to a person not authorized to have that information. Ms. Salas's contention she frequently told the trainer about who was present at the facility on any given day is an inadequate explanation as to why she was transmitting information about the other employee's attendance record and her personal phone number. There is no evidence the employee was involved in any training session with the trainer. It appears to have been a more personal and domestic situation in which the claimant chose to involve herself.

Ms. Salas violated her duties as a human resources employee by abusing her access to employee information and reveal it to others. The employer has the obligation to provide confidentiality for the personal information of all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the

benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of October 28, 2010, reference 01, is reversed. Maria Salas is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw