

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PETRONA SARAVIA**  
Claimant

**APPEAL NO. 12A-UI-03173-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 02/12/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated March 27, 2012, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on April 12, 2012. The claimant participated. Participating as the official interpreter was Nafa Redmond. Appearing as a witness for the employer was Ms. Kris Rossitor, Human Resource Manager.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Petrona Saravia was separated from her employment with Tyson Fresh Meats on November 30, 2011 because she did not possess a current work authorization card allowing her to work in the United States. The claimant was aware that possession of a valid work authorization card was a ongoing job requirement. The employer was not allowed to employ the claimant unless she was deemed to be a U.S. citizen or had a valid authorization card allowing the claimant to work in the United States of America. Although the claimant was given an additional 30 days to obtain the card and reclaim her employment, she was unable to do so and was separated from employment.

The claimant obtained her valid work authorization card in February 2012.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged under disqualifying conditions. 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.

In discharge cases the employer bears the burden of establishing disqualifying conduct sufficient to warrant the denial of unemployment insurance benefits.

In this matter the claimant was separated from her employment when she was unable to meet the legal prerequisite for her continuing employment by having in her possession a valid work authorization card allowing the claimant to work in the United States of America. The claimant was aware of this ongoing work requirement but failed to possess the necessary documentation on November 30, 2011 and therefore was discharged from her employment.

The administrative law judge concludes that the claimant's failure to obtain and maintain the necessary work authorization was in disregard of the employer's interests and standard of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated March 27, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant works in and has been paid wages for insured work equal to ten times her weekly benefit amount and has proper work authorization to perform work in the United States of America.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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