

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA M DEN HARTOG
Claimant

APPEAL NO. 17A-UI-07412-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEW HORIZON FARMS LLP
Employer

OC: 06/18/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Teresa Den Hartog (claimant) appealed a representative's July 12, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with New Horizon Farms (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 9, 2017. The claimant was represented by Melissa Grant, Attorney at Law, and participated personally. The employer participated by Brian Schneekloth, Farm Manager, and Mary Kor, Human Resources Director.

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 October 3, 2016, as a full-time herd's person. The claimant signed for receipt of the employer's handbook on September 23, 2016, before she was hired.

On January 20, 2017, the claimant overslept and arrived at work one hour late. She pressed the buzzer for ninety minutes before the employer allowed her access to the facility. The employer told her if it happened again she would receive a written warning. The claimant was never late again. The employer had a staff meeting on or about April 2017. It told employees to use dividers. The claimant always used a divider after the meeting.

On May 20, 2017, the employer talked to the claimant about not using a sort board and processing a litter of piglets when the litter was too young. The claimant did not see any other employee using a sort board. The employer notified the claimant that further infractions could result in termination from employment. The employer had the claimant sign a warning with nothing written on it. Later the employer wrote things on the warning he thought they talked about. The employer did not give the claimant a copy of the warning. After the talk, the claimant always used a sort board and checked to make certain piglets were the correct age.

During the week of June 14, 2017, three of the eight employees were gone for vacation. On June 14, 2017, the claimant was helping with the weaning processing by raising the heat lamps. The employer thought she was folding laundry rather than helping with the process. On June 15, 2017, the claimant treated the piglets with medicine and marked them with a black paint stick. She should have used the blue paint stick. The employer thought the piglets were not treated. On June 16, 2017, the claimant cleaned more area than she was told to clean. The employer watched but said nothing. Also on this day, she was working with the farm manager when he lost his footing. As soon as she saw this she stopped pushing sows with her sort board. The sows kept moving and could have hurt him but there was nothing she could have done to stop the sow's movement. On June 19, 2017, the claimant took more than thirty minutes to vacuum out the mold and dirt from fifty-two crates. She also processed the wrong crates. When she was first hired she was to process crates that were folded. Later, the employer changed the instructions to process the crates that were unfolded. The claimant found this confusing.

On June 19, 2017, the employer terminated the claimant for not helping with weaning, folding laundry, not treating piglets, cleaning too much and for too long, not protecting the farm manager, and processing the wrong crates.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. *Huntoon v. Iowa Department of Job Services*, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. Some of the employer's examples of poor performance show the claimant cleaning longer or harder than she was asked to clean. In most work environments this would not be cause for termination. Another example shows the employer's lack of clear instructions about which crates to process. Another case shows a situation that was out of the claimant's hands to correct. She could not stop the sows from moving toward the farm manager. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was partially a result of poor instructions and too few workers.

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. The employer's previous warnings were verbal and, therefore, unclear as to content. The employer's "written warning" is suspect because it was signed by the claimant while the page was blank. She did not know what she was signing. It is unclear whether the employer warned the claimant about any of the issues leading to the separation. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible. The employer's testimony was internally inconsistent.

DECISION:

The representative's July 12, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs