

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGAN L GRANT
Claimant

APPEAL NO. 08A-UI-05539-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEJLIK PIG COMPANY
Employer

**OC: 10/28/07 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Hejlik Pig Company filed an appeal from a representative's decision dated June 6, 2008, reference 02, which held that no disqualification would be imposed regarding Megan Grant's separation from employment. After due notice was issued, a hearing was held by telephone on July 22, 2008. Ms. Grant participated personally. The employer participated by John Hejlik, Owner; Troy Smith, Manager; and Bruce Maley, Sow Specialist with Cargill, Inc. Exhibits One and Two were admitted on the employer's behalf. Dan Paris, Laborer, and Keith Hood, Breeding Manager, participated pursuant to subpoenas issued on Ms. Grant's behalf.

ISSUE:

At issue in this matter is whether Ms. Grant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Grant began working for Hejlik Pig Company on January 1, 2008 as a full-time laborer. Shortly after she began the employment, her manager learned that she lived with her boyfriend near the hog farm where he worked. The employer questioned its veterinarian as to whether her living arrangement posed any additional risk of contamination to the hogs at her job. The veterinarian indicated that she could remain in the employment as long as she complied with all bio-security measures.

The employer's procedures require that employees remove their "street" clothing upon arrival at work, shower, and change into clothing they would wear on the farm. They were then to proceed from the shower to the time clock to punch in. The policy prohibited employees from returning to the "dirty" side once they were changed into work clothes. Ms. Grant and others were walking through the shower area in "street" clothes to clock in and then returning to shower. All employees were given a written warning on April 30 advising that this procedure was not acceptable. Ms. Grant was warned that she would be discharged if she violated the procedure in the future.

The owner of the business observed Ms. Grant violate the procedure for showers on or about April 30. He checked with the sow specialist with Cargill and it was recommended that Ms. Grant be discharged. The recommendation was based on her violation of the bio-security procedure coupled with the fact that she lived near a hog farm with an individual who worked on a hog farm. She was discharged on May 1.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Grant was discharged because she lived near a hog farm with an individual who worked on a hog farm. She may well have failed to disclose her living arrangement at the time of hire. However, her manager was aware of the living arrangement shortly after she began the employment. It was decided, with input from the employer's veterinarian, that she could continue in the employment. Therefore, the employer acquiesced to any failure to disclose.

The decision to discharge Ms. Grant was based on her violation of the bio-security procedure on or about April 30. However, she was not the only employee who was violating the standards. At least two managers, Troy Smith and Keith Hood, violated the procedure and were aware that laborers were likewise violating the procedure. Ms. Grant was the only person discharged as a result of the violation. The failure to enforce a policy is tantamount to not having a policy at all. Because others were allowed to violate standards without repercussions, Ms. Grant did not have clear notice prior to the April 30 warning that she was engaging in conduct that might lead to her discharge. Since she was discharged on May 1, she did not have the opportunity to comply with the terms of the warning.

After considering all of the evidence, the administrative law judge concludes that deliberate and intentional misconduct has not been established by the evidence. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated June 6, 2008, reference 02, is hereby affirmed. Ms. Grant was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw