

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELGIE D LUSHER
Claimant

APPEAL NO: 19A-UI-04154-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEABOARD FOODS SERVICES INC
Employer

OC: 04/28/19
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Elgie D. Lusher, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated May 16, 2019, (reference 01) which denied unemployment insurance benefits, finding that the claimant voluntarily quit work on April 2, 2019 because the claimant thought that the work was detrimental to his health. After due notice was provided, a telephone hearing was held on June 14, 2019. Claimant participated. Employer participated by Ms. Erin Hyde, Human Resource Supervisor. Department Exhibit D-1, the administrative file was admitted into the hearing record.

ISSUE:

The issue is whether the claimant was separated from his employment for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having considered all of the evidence in the record, the administrative law judge finds: Elgie D. Lusher was employed by Seaboard Foods Services, Inc. from May 31, 2017 until April 3, 2019 when he was discharged for walking off the job. Mr. Lusher was employed as a full-time animal care giver and was paid by the hour. Mr. Lusher's last immediate supervisor was Mr. Aaron Yearn.

Mr. Lusher was separated from his employment with Seaboard Foods Services, Inc. on April 3, 2019 because Mr. Lusher had walked off the job without notifying or receiving approval from management the preceding day on April 2, 2019.

On April 2, 2019, Mr. Lusher and another "utility" worker discovered that two of the company's feed lines were not working and had been shut off. Mr. Lusher and the other worker turned the lines back on believing that there had been no reason for the lines to have been shut off. A short time later, the company's assistant manager, Carlos Rodriquez discovered that the feed lines that he had shut off earlier had been turned back on. The company's assistant manager looked to be upset because the feed lines had been turned back on. Communication was

difficult because Mr. Rodriguez use of the English language is limited. Claimant however discerned that Mr. Rodriguez disapproved of turning the feed lines back on.

A short time later, the assistant manager became upset because breeding between a sow and boar that was to take place had not happened, although Mr. Lusher had attempted to facilitate the mating. Mr. Lusher again relied upon non-verbal signs to conclude that the assistant manager was dissatisfied because the breeding had not taken place.

Because Mr. Lusher felt that the company's assistant manager was upset at him because of both incidents, Mr. Lusher decided to leave work to minimize any further stress that day. Mr. Lusher did not inform Mr. Rodriguez that he leaving or request permission to leave while Mr. Rodriguez remained at the facility. The claimant instead informed only his co-worker and relied upon the co-worker to tell management of Mr. Lusher's leaving work that day and the circumstances. The subject of communication issues between Mr. Lusher and the company's assistant manager had been previously addressed with Mr. Lusher by the company's human resource supervisor, Erin Hyde. Ms. Hyde had instructed the claimant that if any issues arose regarding Mr. Rodriguez or communicating with Mr. Rodriguez that Mr. Lusher should call directly to Ms. Hyde at her telephone number that is posted in the facility.

Seaboard Foods Services, Inc. addresses the issue of walking off the job during orientation and it is also addressed in the company handbook. The company policy is strictly enforced that leaving work without the authorization of management and/or walking off the job is a serious infraction that results in separation from employment on the first offense without prior warning."

Because the claimant had walked off the job on April 2, 2019 without notice or the approval of company management who were present and had taken no steps to inform management that he was leaving, Mr. Lusher was not allowed to resume employment the next working day.

It is the claimant's position that because he had suffered a mild heart attack in the past, he had left work early on April 2, 2019 to avoid further stress caused by the assistant manager's dissatisfaction with work that day.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the claimant voluntarily quit employment or was discharged by the employer. The evidence in the record clearly establishes that Mr. Lusher did not intend to quit and permanently sever the employment relationship between himself and Seaboard Foods Services, Inc., but he left work without authorization at approximately 10:30 a.m. on April 2, 2019. Mr. Lusher attempted to return to work the following day but he was not allowed to do so by the employer and was separated from his job. The administrative law judge concludes the claimant was discharged and did not quit employment.

The next question before the administrative law judge is whether the claimant was discharged by Seaboard Foods Services, Inc. for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits. He was.

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In the case at hand, Mr. Lusher was discharged because he had walked off the job during the morning of April 2, 2019 when he concluded that the company's assistant manager was dissatisfied with the way that Mr. Lusher was performing his work that morning. The company's assistant manager appeared to be upset. Mr. Lusher walked off the job that day because of statements made by the assistant manager, who spoke only limited English, but because he believed non-verbal actions of Mr. Rodriguez showed he was dissatisfied because of the day's events.

Although Mr. Lusher and the company's human resource manager had recently discussed what action Mr. Lusher should take if he was having a problem with Mr. Rodriguez, Mr. Lusher did not follow the procedure to contacting Ms. Hyde by telephone to resolve any work issues and he did not inform Mr. Rodriguez of an intention to leave for the day although Mr. Rodriguez remained at the facility. Mr. Lusher knew that informing a co-worker that he was leaving was not sufficient, and there were reasonable alternatives available.

In this case, it appears that the employer did not view an employees walking off the job to be an issue of attendance but considered the act to be a matter “category 1” intentional behavior that subjects an employee to immediate termination without prior warning. Employees are aware of the company policy through orientation and the handbook provided to company employees. Because the claimant knew the rule and had a reasonable alternative, but still walked off the job, he was discharged.

For the above stated reasons, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that Mr. Lusher’s termination from employment is for work-connected misconduct sufficient to warrant the denial of job insurance benefits. Accordingly, benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative’s unemployment insurance decision dated May 16, 2019, reference 01 is affirmed as modified. The portion of the termination holding the claimant ineligible for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount is affirmed. The portion of the termination finding that the claimant voluntarily quit employment is modified to find the claimant was discharged for work-connected misconduct.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn