

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZACHARY W JANES
Claimant

DARLING INTERNATIONAL INC
Employer

APPEAL NO: 13A-UI-07818-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/06/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 1, 2013, reference 01, that held he was discharged for misconduct on June 15, 2013, and benefits are denied. A telephone hearing was held on August 9, 2013. The claimant participated. Bob Bushnell, GM, participated for the employer. Official Notice was taken of the Claimant appeal documents.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on July 23, 2012, and last worked for the employer as a full-time cooker/operator on June 15/16, 2013 work shift. During the later period of employment claimant had reported to management what he believed was an equipment issue. He later perceived his third shift supervisor was upset with him for going over his head to management on this issue.

During the early morning hours of May 16 claimant's supervisor had instructed him to do a sample procedure and claimant complied to the point of having it prepared for bagging. Sometime later the supervisor got upset with claimant to the point there was yelling and an exchange of words. Claimant was told to clock-out and leave at 5:30 a.m. before the end of his scheduled shift. Claimant complied and he notified the plant superintendent about what happened.

Claimant was called into a meeting with management on June 17 and discharged for failing to follow a work performance instruction regarding the sample procedure. He had no previous warning on this issue.

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 administrative law judge concludes employer failed to establish claimant was discharged for misconduct on June 17, 2013.

Claimant denies he failed to follow the sample procedure, as he did what he could up to the point he was told to go home. The employer did not offer the supervisor as a witness, and it failed to refute claimant's testimony that he performed his work as instructed. Job disqualifying misconduct is not established.

DECISION:

The department decision dated July 1, 2013, reference 01, is reversed. The claimant was not discharged for misconduct on June 17, 2013. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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