

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DANIEL WILSON**  
Claimant

**WEST LIBERTY FOODS LLC**  
Employer

**APPEAL 21A-UI-21565-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/30/21  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant, Daniel Wilson, filed an appeal from the September 14, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination that the employer, West Liberty Foods, LLC, discharged claimant for conduct not in the employer's best interests. The parties were properly notified of the hearing. A telephone hearing was held on November 18, 2021. The claimant participated personally. The employer participated through Monica Dyar. Employer's Exhibits 1 through 6 were admitted.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a de-caser from October 14, 2020, until this employment ended on January 13, 2021, when he was discharged.

Prior to his discharge, the employer had spoken to claimant about his interactions with female coworkers, in particular. Coworkers had complained that claimant made them uncomfortable by asking personal questions, giving them money and food, and generally hovering. On one occasion approximately three weeks prior to claimant's discharge, his supervisor, David Johnson, talked to him about his interactions with a particular female coworker. Claimant agreed to avoid that coworker thereafter and did so to the best of his ability.

On January 8, 2021, Dyar and Johnson had a discussion with claimant. They told him that his interactions with coworkers were making people uncomfortable. They recommended that claimant not ask too many personal questions and that he not give coworkers food or money. Dyar had expressed to him that his conduct could constitute a major rule violation. Under the employer's policies, major rule violations result in discharge.

On January 12, 2021, the employer received another complaint about claimant. The complaint indicated that claimant had engaged in some of the behavior he had been spoken to about after

the January 8, 2021, discussion. Dyar conducted an investigation, which included an interview with claimant. Claimant did not understand why he was being accused of creating an uncomfortable work environment. He stated during the investigation and during the hearing that he was trying to be friendly and did not pursue anyone that indicated they were uncomfortable. Ultimately, because the employer discovered that claimant engaged in similar conduct after the January 8, 2021, discussion, it determined that claimant's employment should be terminated. HR Manager Melissa Stiffler informed claimant of the decision via phone on January 13, 2021.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa

Ct. App. 1984). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee’s act is misconduct does not rest solely on the interpretation or application of the employer’s policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

Despite the employer’s discussion with claimant on January 8, 2021, claimant credibly testified that he did not understand that his conduct was causing people to be uncomfortable, or that it could result in his discharge. He was not explicitly warned that continued similar conduct could result in discharge. He was told his conduct could constitute a major rule violation, but he did not understand the consequences of such a statement. The administrative law judge found claimant’s testimony credible that he did not intend to cause his coworkers discomfort and that he avoided his coworkers when he was explicitly told to do so. Because claimant did not intentionally run afoul of the employer’s policies, or do so despite prior clear warning, he did not engage in disqualifying misconduct, and benefits are allowed.

**DECISION:**

The September 14, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



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Alexis D. Rowe  
Administrative Law Judge

December 29, 2021  
Decision Dated and Mailed

ar/mh