

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLAS BALTAZAR
Claimant

APPEAL NO. 09O-UI-00249-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CON AGRA COUNCIL BLUFFS
Employer

**OC: 10/05/08 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Intentional Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated October 28, 2008, reference 01, which held the claimant was separated from employment for no disqualifying reason. An initial hearing was held on November 24, 2008. The employer participated. The claimant did not participate. A decision was issued by an administrative law judge in favor of the employer on November 26, 2008. The claimant appealed the decision to the Employment Appeal Board. The matter was remanded for a new hearing because the claimant had not previously been able to participate due to a language barrier. A telephone conference hearing was scheduled for and held on January 22, 2009. Mr. Baltazar participated personally. Participating on his behalf was his attorney, Mr. Tim Doud. The employer participated by Joann Peterson, human resource generalist, and Philip McMillan, quality manager. The official interpreter was Isaura Broste.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional disqualifying misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant was employed by Con Agra Council Bluffs from July 21, 1997, until October 1, 2008, when he was discharged for violation of the company's lockout/tagout safety procedure rule. Mr. Baltazar last held the position of sanitation lead person and was employed on a full-time basis. In his position of sanitation lead person, the claimant was expected to assist and oversee the cleaning of company production lines and to ensure that the production lines were ready for inspection and production by designated times.

The claimant was discharged based upon an incident that had taken place on October 1, 2008. On that date, Mr. Baltazar was preparing a production line to be sanitized and readied for inspection and production within the limited amount of time available to do so. Under company lockout procedures, each employee who has locked out machinery for maintenance or cleaning is required to remove the lock assigned to them at the completion of their duties. If access to a

locked-out machine is necessary and the person to whom the lock belongs is not available, employees are to contact a supervisor and the supervisor in turn performs an inspection to make sure it is safe to restore power to the production unit. On October 1, 2008, the claimant discovered a lock from another employee on the production line that Mr. Baltazar had cleaned and was to return to service in a short period of time. Mr. Baltazar attempted to reach a supervisor via radio but was unable to do so. When the owner of the lock on the apparatus could not be identified by picture or number and the claimant felt pressured to get the line up and running for the USDA inspection, he carefully inspected the line to make sure it was safe to restore power and used a tool to remove the unidentified lock that was preventing the completion of his duties. As a "lead person," the claimant was often required to exercise some independent supervisory judgment while performing daily work duties and believed that he was making the correct decision under the circumstances.

Mr. Baltazar had received lockout/tagout training on the correct procedures and was aware that under normal circumstances, he should identify the owner of the lock and contact that person or contact a supervisor regarding the matter. When questioned by the company about the matter, Mr. Baltazar admitted that he had made an "error in judgment" but stated that his sole intention was to get the line up and running, as he believed it was his job to do so.

The company places high emphasis on safety and, therefore, made a management decision to terminate Mr. Baltazar. The claimant had not previously violated any company safety rules and had received no warnings prior to his discharge.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Baltazar was discharged for intentional misconduct in connection with the employment. It does not.

The evidence in the record establishes that the company uses a lockout/tagout procedure to ensure that company production lines or power-driven equipment are not inadvertently allowed to be powered up while employees are performing maintenance, cleaning, or other duties on the equipment or apparatus. The purpose is to ensure the safety of employees who are working on the machinery or production lines. The evidence further establishes that Mr. Baltazar was provided safety lockout/tagout procedure training and was aware of the purpose of the procedures and the requirements.

On October 1, 2008, Mr. Baltazar was under pressure in the production facility to complete the cleaning of a production line so that the line could be inspected by the USDA shortly thereafter and placed back into production for the company. The claimant testified under oath that he attempted to follow procedure by attempting to identify the owner of the lock that had been placed on the production line but that he was unable to do so. The lock did not have a picture of the owner or identification that would allow Mr. Baltazar to determine who had abandoned the lock. The claimant testified that he followed the second course of action required by attempting to contact a supervisor but that he was unable to do so due to a malfunctioning radio. Being confronted with this unique situation, Mr. Baltazar exercised what he believed to be reasonable discretion in doing what a supervisor would normally do by carefully inspecting the production line to ensure that it was ready to be powered up and ensuring that no employees were working on the line or would be endangered by the removal of the abandoned lock. As a "lead person," Mr. Baltazar had been authorized some discretion in performing his duties and believed that he was acting within the limits of his discretion to complete preparation for the resumption of production. This circumstance had never presented itself to Mr. Baltazar in the past and after

exhausting the normal alternatives available to him within the time he thought available, he chose to act for what he considered to be the company's best interests.

The question before the administrative law judge in this case is not whether Con Agra had a right to discharge Mr. Baltazar for his actions, but whether the claimant's conduct or negligence of such a degree or reoccurrence so as to disqualify him from the receipt of unemployment insurance benefits. While the decision to terminate Mr. Baltazar may have been a sound decision from a management viewpoint, the administrative law judge concludes, based upon the totality of the evidence in the record, that the claimant's failure to follow the employer's expectations on October 1, 2008, was an isolated instance of poor judgment in an otherwise unblemished employment history. The Supreme Court of Iowa held in Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000) that conduct serious enough to warrant a discharge of an employee must be substantial in order to justify a denial of unemployment insurance benefits. In the case of Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa 1992), the Iowa Court of Appeals held that the focus is on deliberate, intentional, and culpable acts by the employee.

The claimant's intention was not to violate company policy. He exercised his judgment believing that it was necessary to have the production line ready for inspection and production and personally inspected the line to ensure that it was safe before removing the abandoned lock.

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.

For the reasons stated herein, the administrative law judge concludes that this isolated instance of poor judgment did not rise to the level of intentional disqualifying misconduct.

DECISION:

The representative's decision dated October 28, 2008, reference 01, is affirmed. The claimant was dismissed under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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