

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN P LOZANO

Claimant

APPEAL NO. 08A-UI-01493-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC

Employer

**OC: 01/13/08 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Juan Lozano (claimant) appealed a representative's February 6, 2008 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Beef Products (employer) for violation of a known rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 27, 2008. The claimant participated personally through Ike Rocha, Interpreter. The employer participated by Jennifer Horken, Human Resources Safety Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 16, 2007, as a full-time edible cleanup person. On January 5, 2008, the claimant entered the pilot room or office and took a coat belonging to a co-worker. The claimant took the coat off the employer's property and removed the owner's name that had been sewn into the fabric. The owner and supervisor searched the property for the jacket but could not find it. The employer viewed a video of the claimant entering the room and leaving with the coat under his frock. The employer questioned the claimant and the claimant denied taking the coat. Later the claimant admitted taking the jacket and wrote a statement containing that admission. He returned the jacket to the employer. The owner's name had been removed but the employer could still read the owner's name in the indented fabric.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally took the jacket for his own purposes and then took the owner's name out of the jacket. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's February 6, 2008 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid

wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css