

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMOTHY TITUS**

Claimant

**APPEAL NO. 09A-UI-00330-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**

Employer

**OC: 10-26-08**

**Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated December 31, 2008, reference 01, which denied benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held April 9, 2009. The claimant participated in the hearing with Attorney Neva Baker. The employer participated through Jamie Reuss-Parizek, Human Resources Manager; Liz Johnson, Safety Manager; Rick Smith, First Shift Supervisor; Chad Schepper, Manager; and Tara Hall, Attorney at Law. Employer's Exhibits One through Four were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record finds that: The claimant was hired as a full-time grinder operator for West Liberty Foods on March 8, 1995 until October 15, 2008. He was properly trained on the safety rules, specifically the lock-out/tag-out procedures that are mandated by the Occupational Safety and Health Administration (OSHA). Before an employee can work on a moving piece of equipment, that equipment must be locked out and tagged out so that it cannot accidentally be turned on while the employee is working on it; failure to do so could result in serious bodily injury or death. The claimant used the lock-out/tag-out procedures on a daily basis as a grinder operator and was certified through training. Failure to follow the lock-out/ tag-out procedure can result in termination. The claimant moved to a cook position in 2005 and was not required to use the lock-out/tag-out procedures. The lock-out/ tag-out training was revised in 2008 and all employees had to be recertified. The claimant was moved back to the grinder operator position on approximately October 6, 2008, and the supervisor assumed he was still certified. The claimant knew he was not certified and knew he did not have the proper locks but worked as an operator grinder for two days without following the lock-out/ tag-out procedures on the grinder. The grinder is ten feet tall and holds about 2,000 pounds of raw meat. The operator has to check the grinder throughout the day for broken blades, foreign materials, or anything else that might be wrong. The grinder must be shut off, locked out, and tagged out, but the claimant was

only shutting off the power to do his checks. On October 8, 2008 another employee saw the claimant not doing the lock-out/ tag-out procedures and told him not to do anything else. The claimant was taken to human resources and was given the lock-out/tag-out test but he did not pass. The manager informed the claimant's supervisor the claimant failed the test; and while waiting to hear back from the supervisor, the claimant talked about working as a grinder without locks since Monday. The manager informed the supervisor of what the claimant had reported and the supervisor initiated an investigation. The claimant was suspended on the following day, pending the outcome of the investigation. He had taken lock-out/tag-out training February 14, 2008 but was not certified, because the certification level of training was for those employees who worked on moving equipment. The claimant was questioned as to whether his supervisor knew he did not have a lock and the claimant said he did not think the supervisor did know. Regardless of the supervisor's actions, the claimant knew he was acting in violation of a serious safety policy but did so anyway for two days. He was discharged October 15, 2008.

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

The issue is whether the employer discharged the claimant for work-connected 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job

Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for violating a major safety rule when he failed to use the lock-out/ tag-out procedures on the grinder for two days beginning October 6, 2008. There is some question as to what the claimant's supervisor knew, but there is no question the claimant knew he was violating company policy. His conduct shows an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits must be denied.

**DECISION:**

The unemployment insurance decision dated December 31, 2008, reference 01, is affirmed. Benefits are denied until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/kjw