

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES M PIRTLE
Claimant

APPEAL NO. 10A-UI-10213-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 06/20/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated July 14, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on September 2, 2010. Claimant participated personally. The employer participated by Maria Bozaan, Human Resource Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: James Pirtle was employed by West Liberty Foods, LLC from September 26, 2005 until June 17, 2010 when he was discharged from employment. Mr. Pirtle held the position of full-time blender operator and was paid by the hour.

The claimant was discharged based upon the employer's belief that Mr. Pirtle had not properly returned a work knife approximately five days before his discharge from employment. Employees are required to check out knives and other steel work utensils and are required to recheck the utensils back in at a specified area when the use of the tools is no longer needed. The employer maintains this system in order to insure that tools or similar items do not inadvertently contaminate food being processed. When interviewed about the incident Mr. Pirtle testified that to his knowledge he had returned the work knife and "if he had not done so he would still have it." The employer interpreted the claimant's statement to mean that the claimant was unsure as to whether he followed the check in procedure and that Mr. Pirtle may still have been in possession of the work knife. It is the employer's belief that the claimant violated the important check in tool policy and a decision was made to terminate the claimant from his employment.

The claimant had previously worked on the company's evening shift and had been used to using a more informal method of checking tools out. The claimant had not on many occasions been required to personally sign for the tool as that requirement was often waived on the night shift.

On the day in question Mr. Pirtle is of the belief that he returned the company work knife to the designated employee and that the employee signified by a hand wave that the remainder of the check in process would be taken care of. It is also claimant's belief that the other worker allowed the work knife to remain in a common area where it later may have been taken by another individual. Claimant denies intentionally violating the company's check in/check out policy.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Pirtle was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegations, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case.

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.

In this case the evidence does not establish that the claimant intentionally violated the company's check in/check out rules. The claimant was new to the day shift and attempted to check the knife in question back in using the more informal procedure that he had become used to while working the second shift. When the claimant attempted to check the work knife in, the individual to whom the knife was being checked into acknowledged the claimant's actions by a wave of the hand and the claimant reasonably believed that the remainder of the check in process would be completed. The knife/tool in question could not be located after a number of days and the employer concluded based upon the claimant's previous statement that he may have still been in possession of the tool/knife.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for this reason but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the evidence in the record is not sufficient to establish intentional, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 14, 2010, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs