

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILLIP GAETA

Claimant

APPEAL NO. 09A-UI-16642-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

Original Claim: 10/04/09

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's October 27, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the employer's account was exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on December 10, 2009. The claimant participated in the hearing. Nikki Bruno, a human resource generalist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 31, 2009. The claimant worked full-time.

On September 26, 2009, the claimant was working at a table with some co-workers. The claimant felt harassed by his co-workers. They made derogatory remarks to him and said a piece of meat looked like part of the claimant's anatomy. The claimant told them to quit talking to him like that and they should be ashamed that a piece of meat was being compared to another's co-worker's wife's genital area.

On September 26, a co-worker reported to a supervisor that the claimant made a derogatory remark about a co-worker's wife. This co-worker was not part of the group working.

On Monday, September 28, 2009, the employer suspended the claimant for the reported incident that occurred on Saturday, September 26. The employer then talked to all the employees in the area. Three co-workers confirmed the reported comment. A fourth co-worker was not at the table and did not hear the reported comment. The claimant denied making the reported comment.

The employer did not know about any problems between the claimant and his co-workers, but the claimant had problems getting along with his co-workers. On September 28, the employer discharged the claimant for failing to be truthful about the September 26 incident and for violating the employer's harassment policy by making inappropriate sexual comments at work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The claimant's testimony, however, was credible and must be given more weight than the employer's reliance on hearsay information from employees who did not participate in the hearing. Therefore, a preponderance of the credible evidence does not establish that the claimant made an inappropriate sexual comment on September 26 or that he did not cooperate with the employer's investigation of the September 26 incident. The facts presented during the hearing do not establish that the claimant committed work-connected misconduct. Therefore, as of October 4, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's October 27, 2009 decision (reference 01) is reversed. The employer discharged the claimant for business reasons, but did not establish that he committed work-connected misconduct. As of October 4, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw