

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PABLO A TZUL
Claimant

APPEAL NO. 06A-UI-11342-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN MORRELL AND COMPANY
Employer

**OC: 10/22/06 R: 01
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Pablo Tzul, filed an appeal from a decision dated November 16, 2006, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 13, 2006. The claimant participated on his own behalf, with a witness Gus Amayon and was represented by Attorney Jay Smith. Susan Jaquez acted as interpreter. The employer, John Morrell and Company (Morrell), participated by Director of Human Resources Steve Joyce.

ISSUE:

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

FINDINGS OF FACT:

Pablo Tzul was employed by Morrell from September 3, 1997 until October 23, 2006. He was a full-time laborer on the second shift. During the course of his employment the claimant received a number of verbal and at least five written warnings regarding time away from this job. He was found sleeping on some boxes, taking excessive breaks, leaving with at least 11 “combo” boxes unprocessed, loitering, “wasting time” and excessive time away from his workstation.

The claimant always maintained he was either in the bathroom, the supervisors were lying, that he was not gone the amount of time the supervisors claimed he had been away from his station, or some other excuse.

On October 18, 2006, another employee notified a supervisor that the claimant was not at his workstation and the crew was one person short. One supervisor stayed at Mr. Tzul's workstation and another one looked for him throughout the plant. After 55 minutes the claimant had not returned to his work area and was not found by the other supervisor. The matter was reported to Human Resources Director Steve Joyce who had the claimant summoned to a meeting, along with union representative and an interpreter the next day. It took the supervisor 35 minutes to find the claimant and bring him to the meeting.

At the meeting the claimant maintained he had been gone on a break for only 20 minutes. He was not with anyone even though he was to be training a new person to take over his job so he could be transferred. He was suspended pending further investigation. Mr. Joyce interviewed the two supervisors and the other employees working with the claimant. The information was consistent that the claimant had been absent from his work area a good deal longer than a mere 20 minutes. He was notified on October 23, 2006, he was discharged.

REASONING AND CONCLUSIONS OF LAW:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had a history of being absent from his work area, loitering, wasting time, taking excessive breaks and sleeping on the job. The incident of October 18, 2006, was not an isolated one. Mr. Tzul knew his job was in jeopardy because of these problems. Given his history of time-wasting, the administrative law judge does not find his assertion that he was on break for only 20 minutes to be credible. This is confirmed by the fact he was to be training a new employee and if he was taking a break, then the trainee should have been with him as this person apparently could not do the job without supervision.

The claimant was discharged for abandoning his work area for nearly an hour without permission from or notice to a supervisor. This caused the work crew to be short one person which negatively impacted the production. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of November 16, 2006, reference 01, is affirmed. Pablo Tzul is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css