

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LARRY D HARPER**  
Claimant

**APPEAL NO. 08A-UI-02144-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OSCEOLA FOODS CORPORATION**  
Employer

**OC: 02/03/08 R: 03  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated February 29, 2008, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on July 15, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with his attorney, Kyle Reilly. Judy Callahan participated in the hearing on behalf of the employer with witnesses, Jeff Bonner and Joe Hughes. Exhibits One through Five were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a sanitation worker from December 30, 2001, to January 30, 2008. The claimant's job was to go around to the different areas of the plant to empty trash receptacles. Jeff Bonner was his supervisor. The claimant was informed and understood that under the employer's work rules, employees working an over eight-hour shift were entitled to two 15-minute paid rest periods and one half-hour lunch break. The work rules prohibit insubordination and harassment.

On October 29, 2004, the employer issued a written counseling to the claimant for taking an unauthorized break on October 24. On July 19, 2007, the claimant was warned for a safety violation for failing to wear earplugs. He was warned at that time that any extended breaks or failing to wear earplugs would result in immediate termination.

On January 30, 2008, the claimant was scheduled to work from 6:00 a.m. to 6 p.m. He took a short break for a few minutes in the morning. He went into the break room at 7:58 a.m., and after heating up a Danish roll, he exited the break room eating the Danish on his way to picking up some more trash.

The claimant took an extended lunch break from about 10:45 a.m. to 11:35 a.m. The relief supervisor, Joe Hughes, was doing his rounds during this time and noticed that the claimant

was in the break room heating up food at 10:50 a.m. and was still in the smoking lounge at 11:35 a.m. He reported this to the human resources director, Judy Callahan.

That afternoon Bonner observed the claimant taking an 18-minute break. This was also reported to Callahan. Callahan and Bonner met with the claimant and he was confronted about taking an extended lunch and afternoon break. The claimant denied taking a 45-minute lunch and asserted he might have been a few minutes over his time. Callahan informed him that he was suspended and he should contact her on February 4, 2008, about his employment status.

As Bonner was escorting the claimant out of the building, the claimant told Bonner that if Callahan really wanted to see gross misconduct, she could watch him kick Hughes' ass. This comment was reported to Callahan.

Callahan discharged the claimant on February 4, 2008, for taking extended breaks in violation of the employer's work rules and for threatening a supervisor with physical violence.

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

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. In the claimant's testimony he began by saying he went into the lunch room at about 10:45 a.m. and later changed it to 10:50 a.m. I believe Hughes' testimony over the claimant's testimony that Hughes saw the claimant still in the smoking lounge at 11:35 p.m. I believe the claimant overstayed his lunch break even if you believe his testimony that he just spent a few minutes on break earlier in the day. His comment to Bonner was insubordinate. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated February 29, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/pjs