

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERALD JOHNSON
Claimant

APPEAL NO: 11A-UI-05929-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEBSTER CITY CUSTOM MEATS INC
Employer

**OC: 04-24-11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 17, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 29, 2011. The claimant participated in the hearing with Current Boning Line Supervisor Mark Dow; Current Boning Line Employee Gilbert Martinez; and Attorney William Habhab. Constance Ingraham, Vice-President of Administration and Finance and Richard Menhusen, Plant Superintendent, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time ham boning production worker for Webster City Custom Meats from June 19, 2006 to April 5, 2011. On September 22, 2009, the claimant was sent to Vice-President of Administration and Finance Connie Ingraham's office to discuss an incident September 18, 2009, where the claimant became upset and lost his temper because the boning line supervisor asked another employee if he needed the claimant to help in the packoff area. The claimant stated he would not go to packoff again unless he received a yellow hat and that the employer could not have another, specific employee working in the claimant's area because she previously called him a bastard. The employer stated he could not guarantee anything but would try to keep them separated. The claimant lost his temper and became extremely angry and screamed, "you are liars." He went to Ms. Ingraham's office and she reviewed the events of the last few days with the claimant and his personnel file, which contained several similar incidents of the claimant losing his temper. Ms. Ingraham suggested he come up with a plan for how he would react the next time he became angry and the claimant said he would just "run away like always." Ms. Ingraham stated it might be better to take a five minute break to decide how important the issue really was and how to respond when he calmed down. She told him that if he felt he could not control his anger he should come to her or Plant Superintendent Rich Menhusen and they would help him with the problem. The claimant again stated he felt he

deserved a “yellow hat” supervisory position and Ms. Ingraham told him that his anger issues would preclude him from being placed in a position as a supervisor. Ms. Ingraham explained that he could have been terminated for his outburst and name calling prior to their meeting and the claimant indicated he knew his actions were wrong. The claimant offered to apologize to the parties involved and Ms. Ingraham agreed that was a good idea and told him that “any more outbursts of anger could jeopardize” his employment and the claimant stated he understood. On May 27, 2010, the claimant and another employee were on break, sitting/leaning on Mr. Menhusen’s vehicle. Mr. Menhusen asked them to get off his car three times before they complied. Mr. Menhusen went to his office and when he looked out the window he again saw the claimant and the other employee leaning against his car so he called them into his office and stated he felt they were acting in an insubordinate manner. As they were leaving his office they were “snickering and laughing” and Mr. Menhusen was upset by their behavior. He decided to suspend them for their conduct and insubordination and told Ms. Ingraham he was going to suspend them and have them report at 10:00 a.m. the following day to discuss the incident. After the claimant and the other employee were notified of their suspensions they remained in the building for approximately 30 minutes causing trouble and talking to other employees in the parking lot. Mr. Menhusen went to the parking lot to direct them to leave and they became so belligerent he extended their suspension to June 1, 2010. The claimant and the other employee showed up May 28, 2010, to retrieve their checks and Ms. Ingraham and Mr. Menhusen decided to deal with the issue before the Memorial Day weekend. Ms. Ingraham asked both men if they wished to keep their jobs and both stated they did. All agreed the incident itself was minor and should have been resolved easily. Ms. Ingraham told the claimant and the other employee they could return June 1, 2010, with “cooperative and positive attitudes” and if they continued to be disruptive their employment would be terminated. On December 13, 2010, Mr. Menhusen walked into the boning department and was approached by the claimant who was angry and stated, “Why don’t you just get out of our department and leave us alone and let us do our jobs?” Mr. Menhusen told the claimant he needed to watch his mouth and reminded him of his past record regarding his being verbally disrespectful and disruptive which resulted in disciplinary action. The claimant complained that the weather was bad the previous Saturday and said, “You knew the weather was bad Saturday and you should have sent us home. If you cared about the employees you would have sent us home.” The employer had offered to allow all employees to stay in hotel rooms paid for by the employer due to the weather but the claimant declined that offer, drove home and put his car in a ditch on his way. When he returned to get his vehicle Sunday it had been towed. Mr. Menhusen told the claimant the employer had done its best to get employees out of the plant as early as possible Saturday and that if he wanted to discuss the issue with the rest of the management team they could do so and the claimant said, “You gonna fire me? Well, fire me then. Fire me.” Mr. Menhusen told the claimant that if he ever talked to him in that way again he would terminate his employment. Mr. Menhusen spoke with Ms. Ingraham and told her what happened and they agreed that any further incidents would result in the claimant’s termination of employment. On April 5, 2011, Mr. Menhusen was walking through the north loading dock toward the ham boning hallway door when he saw the claimant angrily and loudly speaking to Boning Line Supervisor Mark Dow and shaking his finger near Mr. Dow. As Mr. Menhusen walked toward them the claimant left the area and Mr. Menhusen spoke to Mr. Dow about the importance of handling situations where employees were verbally disrespectful or disruptive. Mr. Dow stated the claimant was upset about the hambone line starting late because of business needs. Mr. Menhusen reiterated that it was crucial not to ignore that type of situation and to address it properly. Mr. Menhusen walked down the boning hallway and on his way back the claimant was washing a stainless steel tub with a pressure washer. Mr. Menhusen waited a moment to pass so he would not get wet and when the claimant did not stop he asked him to stop spraying for a moment so he could pass. Instead of stopping the claimant directed the power washer spray at the wall in the hallway next to Mr. Menhusen and said, “What, you don’t want to get wet?” Mr. Menhusen

asked him to stop again and the claimant allowed him to pass. As Mr. Menhusen was walking past him the claimant stated it was "stupid" to start the hamline at 9:15 a.m. instead of 6:30 a.m. He was angry and loud and Mr. Menhusen told him he needed to calm down and stop yelling and explained the change was due to business needs but that explanation did not satisfy the claimant and he continued yelling angrily. Mr. Menhusen reminded him of his previous disciplinary actions and warnings for similar behavior in failing to control his temper and the claimant stated, "I'm not afraid of you and I'm not afraid to stand up to you." Mr. Menhusen told him that he had been warned that further incidents of disruptive behavior would not be tolerated and result in the termination of his employment. Soon after that incident Mr. Menhusen notified Ms. Ingraham of the situation and after reviewing the claimant's personnel file the employer discharged the claimant from his employment with Webster City Custom Meats.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 claimant was involved in at least five incidents of inappropriate, disrespectful and disruptive behavior after being warned his behavior could cost him his job. Despite the warnings the claimant continued to display a bad temper, poor attitude and unprofessional demeanor when dealing with management. He seemed to have a particular problem with Mr. Menhusen, as

demonstrated by the car incident, where the claimant and another employee were sitting on Mr. Menhusen's car, and when he sprayed pressure washer water in front of him against a hallway wall and argued about the production schedule. The claimant was not a supervisor and had no supervisory authority. His position required that he follow direction from supervisory personnel without being disruptive and losing his temper every time he did not like a management decision. While the claimant had the right to express his opinion in a reasonable and respectful manner, he did not have the right to become openly angry, hostile and threatening. The claimant's inability to keep his temper in check was a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The May 17, 2011, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld 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

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