

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHILLIP S MEYER**  
Claimant

**APPEAL NO. 08A-UI-09450-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS DAIRY INC**  
Employer

**OC: 08/10/08 R: 01**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Phillip Meyer filed an appeal from a representative's decision dated October 9, 2008, reference 01, which denied benefits based upon his separation from Wells Dairy, Inc. After due notice was issued a hearing was held by telephone on November 3, 2008. The claimant participated personally. The employer participated by Jennifer Coe, Attorney/Hearing Representative, Witnesses Lori Schnee, Corporate Security Specialist, Marcia Rosacker, Human Resources Department and Ray Bohke, Security Officer. Exhibits One, Two and Three were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from September 1, 2007 until August 11, 2008 when he was discharged from employment for falsification of company safety records. Mr. Meyer was employed as a full-time security guard and was paid by the hour. His immediate supervisor was Lori Schnee.

Mr. Meyer was discharged on August 11, 2008 when the employer reasonably concluded that the claimant had failed to properly inspect and test ten specified safety eye wash stations at various locations at the employer's facility. The claimant had been instructed to perform the inspections and was required to insure that each station was operable by running liquid through the station and checking off the inspections as being complete at the station itself and on a company checklist. The average time for inspection in the past has been approximately 45 to 50 minutes. On August 11, 2008, Ms. Schnee, the claimant's supervisor, noticed the company security vehicle assigned to Mr. Meyer located at Mr. Meyer's girlfriend's house during working hours. Ms. Schnee then subsequently examined the inspection form completed by Mr. Meyer which indicated an inspection time from 10:00 a.m. until 10:36 a.m. Ms. Schnee who had

observed the claimant's vehicle at a non work location for ten minutes during this time frame concluded that Mr. Meyer may have not completed the inspections as certified and had them re-inspected. The company determined that three of the seven stations had not been inspected as they showed no sign of liquid and no markings by Mr. Meyer on the tags at the stations themselves. Based upon the apparent time discrepancy, leaving Mr. Meyer only 26 minutes to complete inspections that normally took twice that long, and the absence of any evidence that three of the ten required inspections had been done, a decision was made to terminate Mr. Meyer from his employment. The employer considered the falsification of safety inspection records to be a serious violation of company policy which may have endangered workers and/or subjected the company to OSHA violations and fines.

It is the claimant's position that all ten locations were personally inspected and that the absence of any evidence of inspection at three locations may be caused by evaporation or his pen marking being "washed off." Under established company policy serious violations of company rules including falsification of documents can subject employees to immediate termination from employment. Mr. Meyer was aware of the company policy and acknowledged receipt of the company handbook.

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

The question is whether the evidence in the record establishes that Mr. Meyer was discharged for misconduct in connection with the employment. It does.

The evidence in the record establishes by a preponderance of the evidence that Mr. Meyer did not complete safety inspections that were required of him by the company on August 11, 2008 and that the claimant represented to the company on his inspection form that he had done so. Based upon the claimant's immediate supervisor's observation of Mr. Meyer at a non work location for ten minutes during the period in question, the employer was reasonable in being suspicious that the claimant could not have completed all inspections within the limited time frame remaining. When three of the ten stations showed no sign whatsoever of being inspected, the employer reasonably concluded that Mr. Meyer had intentionally misreported his safety inspection activities.

Although the administrative law judge is cognizant that Mr. Meyer maintains that it was possible to make all the inspections within approximately 26 minutes and that three of the ten stations showed no sign of inspection due to circumstances over which he had no control, the administrative law judge finds that the claimant's testimony strains credibility. Based upon the potential serious consequences of the failure to inspect, the administrative law judge concludes that the claimant's discharge took place under disqualifying conditions.

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.

**DECISION:**

The representative's decision dated October 9, 2008, reference 01, is affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, providing that he is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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