

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN C BURTON
Claimant

APPEAL NO. 11A-UI-00561-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA PACIFIC PROCESSORS INC
Employer

OC: 10/03/10
Claimant: Appellant (2)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

Brian Burton filed an appeal from a decision dated January 12, 2011, reference 02. The decision disqualified him from receiving unemployment insurance benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on February 23, 2011. The claimant participated on his own behalf and was represented by Karen Anderson. Iowa Pacific Processors, Inc. (IPP) participated by Accountant Todd Smith.

ISSUE:

The issue is whether the claimant was discharged for a substantial job-related misconduct.

FINDINGS OF FACT:

Brian Burton was employed by IPP from November 19 to December 21, 2010 as a full-time meat cutter. Mr. Burton had no prior experience as a meat cutter and was trained for a few days by Production Supervisor Jeff Roberts and his supervisor, Fatina Arifi. He split his time between cutting meat and weighing meat.

When he would be assigned a job to weigh meat he had no trouble keeping up with the work flow. But when he would be moved to the meat cutting position he had a lot of trouble keeping up with the production flow. He was aware that the employer wanted him to perform the trimming procedure in a certain way but would often fail to follow those procedures in order to keep up the required pace.

Mr. Burton received a written warning on December 15 for insubordination. He was angry at Supervisor Arifi because she kept repeating over and over what he should be doing and he referred to her as a "parrot." His performance did not improve because he continued to go outside of the approved procedure in the belief that it was more important to keep pace with the production flow than to follow specific procedure. He was written up for this on December 20, 2010 but his work did not improve. The next day he was discharged by Mr. Roberts and Production Manager Jim Lemke.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 discharged for an inability to do the work to the satisfaction of the employer. With no prior experience as a meat cutter, and a limited amount of training on the job, he was not able to perform the job to the employer's satisfaction. This is not misconduct under the provisions of the above code section. Misconduct sufficient to warrant a denial of discharge is not necessarily serious enough to warrant the denial of unemployment insurance benefits. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The record does not establish the claimant was guilty of deliberate misconduct and benefits are allowed.

The employer did not present any firsthand, eyewitness testimony from the supervisor or the production supervisor to establish the claimant was, in fact, capable of doing the job to the employer's satisfaction. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

DECISION:

The representative's decision of January 12, 2011, reference 02, is reversed. Brian Burton is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs