

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH C PERRY

Claimant

APPEAL NO. 13A-UI-10209-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 08/11/13

Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Joseph Perry, filed an appeal from a decision dated August 30, 2013, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 3, 2013. The claimant participated on his own behalf. The employer, West Liberty Foods, participated by Human Resources Supervisor Nikki Bruno.

ISSUE:

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

FINDINGS OF FACT:

Joseph Perry was employed by West Liberty Foods from April 22 until August 9, 2013, as a full-time maintenance mechanic. On August 1, 2013, Human Resources Manager Kathy Truelson received a report from a supervisor who had received a report from Sally, a security guard. The guard reported Mr. Perry had offered her \$200.00 for her sons to beat up another employee.

Ms. Truelson interviewed Mr. Perry and he denied the allegation. He said he and another employee were talking with Sally when a third employee approached. Sally said she had two sons who would “take care of him” and Mr. Perry jokingly said, “I’d pay money to see that” while pulling currency from his pocket. He put it back immediately and said, “I have better things to spend my money on.”

Mr. Perry was returned to work and Ms. Truelson continued the investigation. It apparently consisted of talking with Sally and the team member allegedly threatened. The employer then notified the claimant on August 9, 2013, she had concluded the allegation was founded and discharged him for creating a “hostile work environment.”

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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The employer was relying strictly on third-hand testimony from Ms. Truelson who was reporting statements from Sally, the security guard. Sally is still an employee of the company and the only eye witness to the event. West Liberty Foods did not have Sally testify at the hearing.

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). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of August 30, 2013, reference 02, is reversed. Joseph Perry is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs