

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT MORRIS**

Claimant

**APPEAL NO: 16A-UI-10143-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SMITHFIELD FARMLAND CORP**

Employer

**OC: 08/21/16**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 13, 2016, 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 October 3, 2016. The claimant participated in the hearing with Attorney Dennis McElwain. Becky Jacobson, Human Resources Manager and Brian Boland, Assistant Operations Manager, participated in the hearing on behalf of the employer and were represented by Attorney Gary Enis. Employer's Exhibits One and Two and Claimant's Exhibit A were admitted into evidence.

**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 production worker for Smithfield Farmland Corporation from August 20, 2013 to March 4, 2016. He was discharged for smoking outside of a designated smoking area.

On February 29, 2016, Assistant Operations Manager Brian Boland was called to the nurse's station. When he arrived he learned the claimant severely crushed his foot between a machine and the floor and observed the claimant was in tremendous pain. The nurse eventually took the claimant's boot and sock off which increased his pain. The employer determined it could not transport the claimant to the emergency room itself so called for an ambulance. Emergency medical personnel arrived and placed the claimant in a seated position in a wheelchair type gurney, and carried him down the flight of stairs to the landing where he was transported to a waiting gurney. When the claimant was placed on that gurney, just before being taken outside to the waiting ambulance, Assistant Operations Manager Brian Boland noticed the claimant had a cigarette and lighter in his hand. The claimant put the cigarette in his mouth, with the permission of the ambulance staff, and Mr. Boland said, "Do not light it because it is against company policy to smoke in the building. The claimant replied that he did not care as he was in pain. The claimant proceeded to light the cigarette anyway because he was approximately five

feet from the outside door and it was extremely windy outside so he feared he would not be able to light his cigarette outside. Additionally, he feared he would be in the hospital for several days and would not be able to smoke there either.

On February 29, 2016, within one hour of the incident, Mr. Boland wrote a note to several management personnel detailing the situation. Supervisor/witness Brian Lazar also wrote a statement about the situation that said the claimant was at the bottom of the steps between the two doors that go outside when he lit his cigarette after Mr. Boland told him not to do so.

The claimant returned to work March 3, 2016, on crutches and was suspended pending investigation. Human Resources collected the written statements from Mr. Boland and Mr. Lazar, reviewed the handbook and past practice and met with the termination team which determined the claimant was smoking outside the designated smoking area and in the building which is a violation of the employer's policy and state law. It sent the claimant a certified letter notifying him his employment was terminated effective March 4, 2016. The employer did not present any evidence of previous warnings received by the claimant and he had never received a warning about smoking outside of a designated area before.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant did smoke outside of a designated smoking area there were extenuating circumstances surrounding the situation. The claimant crushed his foot at work and was in so much pain he received three morphine shots when he arrived at the hospital. He was under a great deal of stress because of the pain and did violate the employer's smoking policy and Mr. Boland's directive not to smoke in between the two doors leading outside where an ambulance was waiting for him. The claimant explained that it was windy outside and because he believed it might be his last chance to smoke before he got out of the hospital, as he anticipated having to remain in the hospital at least a few days, he lit a cigarette just before the paramedics took him outside. Technically, the claimant broke the employer's rule.

However, the claimant could not walk to the designated smoking area in his present condition and may have been in shock given his injury and the degree of pain he was experiencing. Had the claimant been able to walk to the smoking area this situation would not have occurred. The claimant lit a cigarette a few feet from the outside doors. He did not attempt to smoke at the nurse's station or anywhere else within the building except by the outside door on his way out because he was concerned he would not be able to light his cigarette once he got outside due to the wind.

The employer did not present evidence of other warnings issued to the claimant and certainly no warnings regarding violating its smoking policy to the claimant. Consequently, the claimant's violation of the smoking policy was an isolated incident of misconduct under very trying and painful circumstances. Under these specific circumstances, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

#### **DECISION:**

The September 13, 2016, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed  
je/rvs