

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRACY L BOWLING**  
Claimant

**APPEAL NO: 15A-UI-02522-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGRI STAR MEAT & POULTRY LLC**  
Employer

**OC: 02/08/15**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Tracy L. Bowling (claimant) appealed a representative's February 20, 2015 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Agri Star Meat & Poultry, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 30, 2015. The claimant participated in the hearing. Laura Roney appeared on the employer's behalf. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Reversed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on September 21, 2010. He worked full time as a maintenance mechanic on an overnight shift at the employer's kosher meat slaughter and processing facility. His last shift of work was from the evening of January 27 into the morning of January 28, 2015. The employer discharged him on February 2, 2015. The reason asserted for the discharge was destruction of company property causing a financial loss due to working unsafely and performing unauthorized work.

On or about the morning of January 28 the employer discovered that there had been some damage to some compressor controllers on an electronics board. The employer asserted that this must have been due to some type of function the claimant had done on the board, and further asserted that the claimant had been previously instructed not to do anything with the board. The claimant denied that there was anything that he had done that would have caused

the damage to the controllers. He had not been instructed not to do anything with the board, but rather that he had been instructed to reset a fuse on the board, which he did; however, he denied that the work he had done would have resulted in the damage the employer accused him of causing.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the conclusion that the claimant was responsible for the damage to the compressor controls. The claimant denied causing the damage or doing anything he had been instructed not to do. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was in fact responsible, or that he had done something he had been instructed not to do. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's February 20, 2015 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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