

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT HOFF
Claimant

APPEAL NO. 12A-UI-08727-W

**ADMINISTRATIVE LAW JUDGE
DECISION**

TWIN COUNTY DAIRY INC
Employer

OC: 07/12/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a fact-finding decision dated July 12, 2012, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 5, 2012 in the Cedar Rapids workforce center. Claimant participated through attorney Corey Luedeman. Employer participated through attorney, Charles Blades. CEO John Roetlin and QC Manager Steve Neuzil also participated on behalf of the employer. Exhibits A through C and Claimant Exhibits 1 through 5 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Claimant was employed as a full-time press operator beginning in November 2008. He was discharged on June 19, 2012 by employer for stealing milk from the plant. He was observed by Terry Albright drinking raw milk in the break room on some date prior to June 19. The employer specifically accused the claimant of taking raw milk from the pasteurization room in violation of company rules. Claimant was under a final warning for absenteeism and tardiness.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct. In this case, the claimant was not sufficiently warned regarding the conduct in question.

Claimant had been placed on a final warning for attendance/tardiness violations. The final warning stated specifically that "any further incidents will result in termination." The employer unquestionably knew that the claimant regularly entered the pasteurization room to obtain and

drink raw milk for an extended period of time. The QC Manager himself had witnessed Mr. Hoff drinking raw milk. His supervisor, Mr. Albright clearly knew claimant had been drinking the raw milk from the pasteurization room. While Mr. Albright did not testify live, he wrote a statement indicating that Mr. Hoff worked and drank raw milk from the pasteurization room on June 12, June 14 and June 15. Mr. Albright did not discipline the claimant for this. No discipline of any kind was given to Mr. Hoff for engaging in this conduct at any time during his employment. Consequently, claimant had no way to know that his actions were deemed to be a serious violation of the employer's standards of conduct.

Mr. Roetlin testified credibly that he was unaware that his employees were drinking raw milk. He was reasonably upset when he discovered what was going on. Nevertheless, the employer has failed to meet its burden of proof that claimant engaged in intentional misconduct.

DECISION:

The fact-finding decision dated July 12, 2012, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/pjs