

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONY A BUTLER
Claimant

APPEAL NO. 08A-UI-11034-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

**OC: 10/26/08 R: 3
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Tony Butler, filed an appeal from a decision dated November 17, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 9, 2008. The claimant participated on his own behalf. The employer, West Liberty Foods, participated by Human Resources Supervisor Monica Dyar.

ISSUE:

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

FINDINGS OF FACT:

Tony Butler was employed by West Liberty Foods from July 9, 2007 until October 26, 2008 as a full-time maintenance mechanic working 5:00 p.m. until 5:00 a.m. He received warnings on January 4, and 31, and July 2, 2008, for not doing his assigned duties. The final warning was a three-day suspension, which is the disciplinary step prior to discharge.

Part of his job duties was to do an inspection of the mezzanine area at least three times during the shift. The inspections were to be done at the beginning, middle, and end of the shift. On October 22, 2008, the claimant went off duty at 5:30 a.m., and a leak in a pipe on the mezzanine was found by another maintenance mechanic. Facilities Manager Doug Burtlow was advised of this at 7:00 a.m. and he inspected the area. There was a "pinhole" leak in one of the pipes and water was spraying on the ceiling, walls, and insulation. The running water was audible and it had pooled on the floor and was leaking to the lower level. It was estimated the leak had been running for four or five hours by that time.

It was also discovered that morning that the claimant had not cleaned all the barrels he had been assigned to scrub. The clean barrels were stacked on top of dirty ones but Mr. Butler had "signed off" that all the barrels had been cleaned,

These matters were reported to Human Resources Supervisor Monica Dyar, who investigated by talking to Mr. Butler, Mr. Burtlow, and the security office. The security officer who had been on duty that night customarily checked the mezzanine, even though it was not part of his required duties, and his check between 11:00 p.m. and midnight had not discovered any leaks.

Ms. Dyar does not have the authority to discharge without consulting with higher management, including the corporate office. She concluded her investigation on October 23, 2008, and referred the matter to corporate office. A review of Mr. Butler's disciplinary history was done and the decision was made to discharge. He was notified of the decision on October 26, 2008, by Ms. Dyar.

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 claimant had been advised his job was in jeopardy as a result of his failure to perform his job duties resulting in damage or potential damage to company equipment. Although he asserted he had done the required checks of the mezzanine throughout his shift, he was unable to state when the last check had been. He was also unable to explain how all the clean barrels ended up on top of all the dirty barrels when he stated he had cleaned them all as required.

The administrative law judge considers it to be entirely likely an employee might forget or fail to do some of their assigned duties. But the number and seriousness of Mr. Butler's failures rise

beyond merely the occasional lapse. There is a pattern of behavior in not fully performing his responsibilities, resulting in loss, damage, and detriment to the employer. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of November 17, 2008, reference 01, is affirmed. Tony Butler is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw