

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBBY D HAGEN

Claimant

APPEAL NO. 11A-UI-09375-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC

Employer

OC: 05/15/11

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Debby D. Hagen (claimant) appealed a representative's June 13, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Beef Products, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 1, 2011. The claimant participated in the hearing. Rachel Clemons appeared on the employer's behalf. One other witness, Jennifer Stubbs, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the parties, and the law, 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?

FINDINGS OF FACT:

The claimant started working for the employer on September 7, 2010. She worked full time as a raw material coordinator in the employer's Waterloo, Iowa, beef pro; she had been moved to a new shift as of April 5, 2011. Her last day of work was May 17, 2011. The employer suspended her on that date and discharged her on May 18, 2011. The reason asserted for the discharge was a safety violation for failing to wear complete protective gear while walking across the production area during a periodic cleaning.

On May 17 the claimant had crossed through about 20 feet of the production area to get to another area where she needed to work. Chemical cleaning was in process in the production area. The claimant was not wearing a rainsuit, face shield, or gloves. The employer's safety protocols require these items when in the production area during cleaning. As a result of the claimant's failure to comply with this protocol, she was discharged.

The claimant had not had to deal with the chemical cleaning issues while working on her prior shift. After she changed shifts, while she had been given the written procedural information, she had not been given any actual training regarding the safety protocol. She had been given some prior warnings for work performance issues, but not any safety issues.

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 that was a material breach of the duties and obligations owed by the employee to the employer. 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 that 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. 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. 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 her failure to follow the safety protocol on May 17. Under the circumstances of this case, the claimant's failure to observe and comply with the safety protocol on that date was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. 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 June 13, 2011 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 she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw