

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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WEST LIBERTY FOODS LLC
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WEST LIBERTY IA 52776

Appeal Number: 06A-UI-00562-ET
OC: 12-11-05 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 6, 2006, 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 January 31, 2006. The claimant participated in the hearing. Jamie Ruess, Human Resources Manager, and Martin Sievers, Operations Manager, participated in the hearing on behalf of the employer.

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 cooler operator for West Liberty Foods from September 25, 1989 to December 9, 2005. On November 2, 2004, the claimant received a

written warning for failing to keep an up-to-date inventory on a daily basis. On September 7, 2005, he received a written warning for failing to keep a current inventory, which resulted in loss of product. The claimant signed both warnings. On December 4, 2005, the claimant highlighted a report to the finance department stating there were 78 tanks of meat that were not in the cooler and on December 6, 2005, the employer discovered 67 of the tanks reported missing were present in the coolers. On December 7, 2005, the USDA tagged one of the employer's coolers because the inspector "observed an excessive amount of meat on the floor;" noted that formulated product was also "splattered on the wall from the floor to about two feet up the wall;" and "also on the floor in front of the unit about a four foot square area and on the floor of the Northeast side of the cooler in about a four foot square area." The claimant told another employee that the cooler was tagged because there was meat on the floor from the previous evening. He indicated he saw it on the floor but forgot to pick it up. The claimant testified he did not believe there was enough meat on the floor to clean up because there was only a small amount of meat on top of the drain which was draining slowly, although he did not tell the employer he called maintenance. The claimant was suspended December 7, 2005, and his employment was terminated December 9, 2005.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Although the claimant testified he did not recall being warned about insufficient inventory procedures November 2, 2004, or September 7, 2005, the employer's testimony regarding the warnings was credible. Additionally, while the claimant maintains he counted the inventory the evening of December 4, 2005, it seems illogical to believe he could have missed at least 67 tanks if he actually did the inventory as required. Finally, the employer's testimony and the USDA inspector's report both indicated there was meat on the floor and the wall and that the claimant told another employee he saw the meat the previous evening but "forgot" to clean it up. The claimant's actions December 4 and December 7, 2005, were not isolated incidents, and his conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Benefits are denied.

DECISION:

The January 6, 2006, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

je/kjw