

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON R KELLY
Claimant

APPEAL NO: 07A-UI-03314-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CURLYS FOODS
Employer

**OC: 03/04/07 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Jason R. Kelly (claimant) appealed a representative's March 23, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Curlys Foods (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2007. The claimant participated in the hearing. Kathy Peterson, the human resource manager, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 6, 2005. The claimant worked as a full-time general laborer on the loin line. The employer's progressive disciplinary policy informs employees they can be discharged if they receive four written warnings within a year. The employer may discharge an employee after a suspension even if the employee has not had four written warnings.

On January 5, 2006, the claimant damaged a forklift at work. As a result of this accident, the employer reassigned the claimant. The claimant also received a written warning for violating the employer's safety standards. On November 8, 2006, the claimant left his production line around 11:15 p.m. to go to the restroom. The claimant did not receive permission from a lead person before he left, but he saw his supervisor in the hall on the way to the restroom. The claimant told his supervisor he was going to the restroom.

Usually, the claimant's production line goes to lunch at 11:30 a.m. Instead of going back to his work area after he was finished in the restroom, the claimant went to lunch at 11:30 a.m. The claimant did not know his production line did not go to lunch until 11:45 a.m. that day. The

claimant's employer reported that the claimant left the line without permission and did not return from lunch until 12:07 p.m. Employees receive a 30-minute lunch break, not 37 minutes. The employer gave the claimant a written warning and suspended him for leaving the line without permission and for taking a longer lunch than the employer allowed. The written warning informed the claimant that any future problems could result in his discharge.

On March 3, 2007, the claimant reported to work as scheduled. The claimant had to go to the bank before it closed at noon to withdraw money. The claimant needed the money so he could get his wife's prescription filled at a pharmacy. The claimant talked to his co-workers about leaving work early. They did not voice any problems if he left work early. The claimant left work at 11:37 a.m. and his co-workers worked until noon. The claimant did not receive authorization from a supervisor to leave work early.

The employer discharged the claimant on March 6 for again leaving his work area without authorization after he was suspended for this same problem in November 2006.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known the employer required him to obtain permission from a supervisor before he could leave his work area prior to a break or the end of a shift. The employer not only gave the claimant a written warning but also suspended him in November 2006 for leaving his work area without permission to go to the bathroom and going to lunch before his line was authorized. On March 3, the claimant talked to his co-workers about leaving work about 20 minutes early, but he did not talk to a supervisor. The claimant thought his co-workers would cover for him. By talking to his co-workers, the claimant intentionally failed to get a supervisor's permission to leave work early. Since the employer warned him about this in November, the claimant's intentional failure to get permission to leave work early amounts to a substantial disregard of the employer's interests. The claimant committed work-connected misconduct. As of March 4, 2007, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 23, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs