

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OSCAR S GARCIA
Claimant

APPEAL NO. 07A-UI-08601-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS DAIRY INC
Employer

OC: 07-29-07 R: 01
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 24, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 26, 2007. The claimant did participate and was represented by Jay Smith, Attorney at Law. The employer did participate through Brian Hovden, Operations Supervisor, and Wendy Lee, OC Generalist, and was represented by Raul Ybanez of TALX UC eXpress. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a Category C Helper/Production Worker, full-time, beginning May 2, 2005, through July 24, 2007, when he was discharged.

The claimant was discharged for taking a 30-minute break on July 24, 2007. The claimant was only to take a 15-minute break. The claimant had just been warned the night before about taking too long for breaks. The claimant said he was not the only person that was doing that, so he thought it was ok even though he had been previously warned about taking too long for break. The claimant was given a copy of the handbook, which contains the break policy.

The claimant admitted that he took too long for break, but said that others did too, so he thought it was ok. The claimant had been previously been suspended for sleeping on the job in June of 2007.

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.

The claimant was discharged for taking too long on breaks. The claimant was allowed to take a 15-minute paid break but instead took a 30-minute break. The claimant had been warned just the night before about taking too long for break and knew or should have known that it was unacceptable behavior. The claimant's allegation that he was not warned the night before is not credible. The administrative law judge concludes that the claimant is denying the warning in order to attempt to secure unemployment insurance benefits. The claimant admits that he told the employer about another employee, Don, taking too long of a break. The employer investigated Don to discover if he was taking too long of breaks. The claimant reported Don, but did not mention Chad until the time of the hearing. The claimant was given an opportunity to offer an explanation to both Mr. Hovden and to Ms. Lee but did not do so. The claimant's explanation at hearing is not believable in light of his failure to provide that information to the employer at the time of his discharge. The claimant knew that he was not to take over 15 minutes for a break. The claimant had been given a copy of the attendance policy which provides that only a 15-minute break may be taken. The claimant's action, that is taking too long for breaks, amounts to theft of time from the employer and is sufficient misconduct to disqualify him from receipt of unemployment insurance benefits.

DECISION:

The August 24, 2007, 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw