

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK LARSON
Claimant

APPEAL NO. 07A-UI-08147-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS DAIRY INC
Employer

OC: 07-22-07 R: 01
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 15, 2007, 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 September 10, 2007. The claimant participated in the hearing. Alfredo Moreno, Human Resources; Ryan VanderSchel, Supervisor; and Connie Hickerson, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

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 category B helper for Wells Dairy from September 24, 1997 to July 16, 2007. The claimant was placed on a last-chance agreement and suspended for five days March 13, 2007, due to job performance and failure to follow company policy. On May 17, 2007, he was warned about his job performance and violations of company policy for not completing his work on time. The employer gave him the option of taking a cut in position or losing his job and the claimant took the category B helper job beginning June 3, 2007. On June 12, 2007, the claimant was running the filler on the line and the machine jammed and the claimant failed to push the bypass button so ice cream began falling on the floor. The claimant had just started in his new position and testified no one else was around to help him and he did not know he should push the bypass button. He did not receive a warning about the incident. On July 5, 2007, the bulk wrapper ran out and the claimant stated he did not know it was out of wrap but agreed with the employer when told that keeping the bulk wrapper stocked was his main duty. He did not receive a written warning for that incident. On July 9, 2007, the claimant was relieved for lunch and returned 15 minutes later, instead of taking a 30-minute lunch break as required. The claimant testified he did not know he was being relieved for lunch but thought it was a regular break. He did not receive a written warning for that situation. On July 15, 2007, the label machine broke and the claimant did not inform the operator, causing the machine to be down for 30 minutes when he threaded it wrong. The claimant did not believe he threaded the machine that day or did anything wrong. On July 16, 2007, the claimant did not show up at

6:00 a.m. for the 12-hour shift run through as required but instead reported for work at 8:00 a.m., and the employer terminated his employment for policy violations.

The claimant has not made a weekly claim for unemployment insurance benefits and has not received benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. 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 substantial and 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). While the claimant received at least four warnings when he worked in the maintenance department and was placed on a last chance agreement before he was demoted to a category B helper, the employer did not issue any warnings to him in his new position. He worked in his new position for

approximately six weeks and made four mistakes, three of which the claimant denied responsibility for. Although the administrative law judge believes he did make the errors, he was new to the position and it does not seem unreasonable that he would make some mistakes during the learning process. Consequently, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 15, 2007, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw