

**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**

**ROBERT HUGHES
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OSCEOLA IA 50213**

**OSCEOLA FOODS CORPORATION
c/o JON-JAY ASSOCIATES
PO BOX 182523
COLUMBUS OH 43218-2523**

**Appeal Number: 05A-UI-06651-RT
OC: 05/29/05 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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Robert Hughes, filed a timely appeal from an unemployment insurance decision dated June 13, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on July 14, 2005, with the claimant participating. Judy Callahan, Personnel Manager; Brian Gerling, Supervisor; and Kyle Hill, Team Leader; participated in the hearing for the employer, Osceola Foods Corporation. Employer's Exhibits One through Four were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One through Four, the administrative law judge finds: The claimant was employed by the employer as a full-time production employee from April 7, 2003, until he was discharged on May 26, 2005. The claimant was discharged for walking off the job on May 25, 2005, without permission and in violation of instructions otherwise. On May 25, 2005, the claimant's ordinary shift was to end at midnight. The claimant approached his supervisor, Matt Niedbalski, at approximately 11:15 p.m. and asked if he was done and could go home. Mr. Niedbalski told the claimant there was still work to be completed, including putting away vats, and he would need to work until 11:40 p.m. Kyle Hill witnessed this conversation. The claimant was closer to Mr. Niedbalski during this conversation than was Mr. Hill. At approximately 11:30 p.m. Mr. Niedbalski went looking for the claimant and could not find him. The claimant had clocked out at 11:31 p.m. and went home. Mr. Niedbalski's statement appears at Employer's Exhibit One.

The employer's policies, at Employer's Exhibit Four, a copy of which the claimant received and for which he signed an acknowledgment, also as shown at Employer's Exhibit Four, provide that walking off the job is gross misconduct and under the employer's policies can result in immediate discharge. Further, a second suspension will also result in immediate discharge. Finally, three written notices in one year will result in discharge. For the incident on May 25, 2005, the claimant was given a third "strike," or written warning, and would have been suspended as well, and was discharged. The claimant had received a prior first "strike" on August 20, 2004, for walking off the job on that occasion, as shown at Employer's Exhibit Two. The claimant received a second "strike" and suspension on August 26 through September 2, 2004, for attendance. The claimant also had had numerous verbal and written warnings for attendance, all as shown at Employer's Exhibit Three.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 parties agree, and the administrative law judge concludes, that the claimant was discharged on May 26, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witnesses credibly testified that on May 25, 2005, the claimant had amassed not only a second suspension, but a third "strike," or written warning, both of which called for discharged. They also credibly testified that the claimant's act on May 25, 2005, in walking off the job, itself, called for an immediate discharged. Employer's witnesses credibly testified that on May 25, 2005, the claimant was specifically told by his supervisor, Matt Niedbalski, that he was to work until 11:40 p.m. However, the claimant clocked out at 11:31 p.m. The claimant testified that he was told to leave at 11:30 p.m., but this is not credible. An eyewitness standing further away from Mr. Niedbalski than the claimant credibly testified that the claimant was specifically told he had to work until 11:40 p.m. This is confirmed by the written and notarized statement by Mr. Niedbalski at Employer's Exhibit One. That testimony outweighs that of the claimant. The administrative law judge notes that the claimant's attendance record supports the conclusion of the employer's witnesses that the claimant left work early. The claimant also concedes that he received a "strike," or written warning, on August 20, 2004, for the same thing, but testified that he thought that his supervisor was joking at that time. However, his supervisor at the time, Brian Gerling, one of the employer's witnesses, credibly testified that he needed help and told the claimant that he was not finished with work, but the claimant left and could not be found. This does not appear to be a joking situation to the administrative law judge. The claimant could have been discharged at that time, but he was given a "strike" in lieu of the discharge. The claimant had also received a "strike," or written warning, for attendance and a suspension on August 26, 2004, through September 2, 2004.

On the record here, the administrative law judge is constrained to conclude that the claimant did disobey specific instructions on May 25, 2005, and that this act was not only an act calling for immediate discharge by the employer's policies but also triggered a third "strike," or written warning, which would also call for immediate discharge and would have resulted in a second suspension that also would have required immediate discharge, all under the employer's policies. The claimant received numerous warnings about his attendance, as shown Employer's Exhibit Three, and should have been completely aware that his job was in jeopardy for those warnings as well as the "strikes" mentioned above. Therefore, the administrative law judge concludes that the claimant's actions were deliberate acts or omissions constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince a willful or wanton disregard of the employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees and, at the very least, is carelessness or negligence in such a degree of recurrence all as to establish disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of June 13, 2005, reference 01, is affirmed. The claimant, Robert Hughes, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

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