

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD W WHALEN
Claimant

APPEAL NO: 11A-UI-14328-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS
Employer

**OC: 10/09/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 27, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Alejandra Rojas, a human resource specialist, and Jeff Baker, the quality assurance manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in October 2009. He worked as a quality assurance technician on third shift since November 2010.

Late July 2011, the employer noticed an increase in the number issues USDA inspectors reported that occurred during pre-op inspections. The employer talked to the claimant and reminded him that he must do his inspections carefully so USDA inspectors would not find any problems. During an August meeting, the employer learned the plastic put on equipment to protect it was left on when the claimant did his pre-op inspection. The employer then told him to remove the plastic before he inspected equipment. The employer had changed from a clear to a colored plastic and it was harder for the claimant to inspect equipment when he left the plastic on. After the employer told the claimant to remove the plastic before he did his pre-op inspection many of the pre-op issues were resolved.

In late August, Baker heard the claimant tell a USDA inspector several times he would not tag a piece of equipment. There was more than one piece of equipment in this room that had problems. The claimant tried to get the USDA inspector to understand the magnitude of the problems so more than just piece of equipment would be tagged or put out of commission. After telling the USDA inspector several times he would not tag the equipment, Baker interrupted and apologized to the USDA inspector. Baker reminded the claimant he had to follow all USDA

inspectors' requests. The next day, the claimant talked to the same USDA inspector and explained what he had been trying to tell him the day before. The inspector then told the claimant a tag could be put on the door so the room could not be used. There were no problems of a similar nature again.

On September 17, the claimant left at the end of his shift even though there was a problem in the room where products were deep fat fried. Since the claimant did not have experience or knowledge about the oils used, he assumed the first shift quality assurance technician who had this experience could resolve the problems in this room. Before the claimant left work, he told the first-shift employer there was issue in this room. The employer was investigating this incident because the claimant before he resolved the problem in this room. The employer had not talked to the claimant about this incident before October 11.

On October 4, a USDA inspector issued a NR for a dirty electrical cabinet. When the claimant passed this piece of equipment, he had not known he was to check the inside of the cabinet. On October 6, the same electrical cabinet was tagged by a USDA inspector. On this day the claimant understood maintenance was going to clean the inside of the cabinet. The claimant did not inspect the cabinet a second time after maintenance cleaned it. The claimant's failure to check the equipment a second time meant productions was held up on this line longer than the employer believed was necessary.

On October 11, 2011, the employer discharged the claimant for continued poor or unsatisfactory job performance.

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 § 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).

Even though the employer talked to the claimant about the increased number of issues with pre-op inspections in July, many of these issues were resolved after the employer told the claimant to take the plastic off the equipment before he inspected equipment. The claimant used poor judgment when he declined to put a tag on a piece of equipment an inspector asked him to tag. The claimant did not want to tag just one piece of equipment because that room had more problems. He tried unsuccessfully to get the inspector to understand this. The next

working day when the claimant talked to the inspector again, he then understood what the claimant had tried to tell him the day before. The claimant then learned he could put a tag on the door to the room so all the equipment in that room was off limits.

On October 4, the inside of a cabinet was not on the claimant's list to inspect so he did not. On October 6, the claimant understood maintenance personnel would clean the cabinet after a USDA inspector had tagged it. The problem was that the claimant did not go back and inspect the equipment again so the line could be used or released for production as soon as possible.

The employer established justifiable business reasons for discharging the claimant. The claimant may not have performed his job satisfactorily, but the facts do not establish that he intentionally failed to perform his work duties or that he was careless or negligent to the extent that he committed work-connected misconduct. As of October 9, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's October 27, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons. The claimant may not have performed some of his work satisfactory, but he did not commit work-connected misconduct. As of October 9, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css