

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

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Appeal Number: 04A-UI-06043-SWT
OC 02/15/04 R 03
Claimant: Respondent (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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 21, 2004, reference 07, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 24, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. David Williams participated in the hearing on behalf of the employer with a witness, Greg Wery.

FINDINGS OF FACT:

The claimant worked part-time for the employer as a meat clerk from March 3, 2003 to May 9, 2004. His main duties involved cleaning the meat areas in the store, including cleaning the machines and equipment.

On January 26, 2004, a safety guard on a meat saw broke while the claimant was cleaning it. The guard was cracked before the claimant started cleaning it, and he did not do anything deliberate or negligent to cause it to break. On March 29, 2004, the claimant was trying to remove a bolt from a meat slicer to clean the slicer. The bolt was bent and in trying to get the bolt off, it broke. The claimant did not do anything deliberate or negligent to cause the bolt to break off. On April 17, 2004, the claimant over tightened a bolt on a meat slicer, which caused the plastic guard on the slicer to break. The claimant did nothing deliberate to damage the slicer, but he was negligent in not paying sufficient attention to what he was doing. The claimant received a verbal warning on April 19, 2004, and was told that he needed to be more careful and could be discharged if he damaged equipment again.

On May 8, 2004, the claimant was cleaning a new meat grinder. He was carrying the plastic baton used to push meat into the grinder and another part from the machine. The baton slipped out of his hands and hit the floor. A piece broke off, but the claimant did not notice it and he put the baton with the grinder after cleaning it. The claimant did not deliberately break the baton, but was negligent in dropping the baton on the floor.

The employer discharged the claimant on May 9, 2004, after the broken baton was discovered for repeated destruction of company property.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 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 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).

The last two instances of equipment damage were due to negligence by the claimant. The question is whether those two instances of negligence establish conduct equivalent to willful misconduct in culpability. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. These instances of negligence were ordinary negligence or carelessness not the kind of reckless conduct that would be equal to willful misconduct in terms of disregard for the employer's interests.

DECISION:

The unemployment insurance decision dated May 21, 2004, reference 07, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjf