

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID K AMICK
Claimant

APPEAL NO. 08A-UI-11518-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOLDEN OVAL EGGS
Employer

OC: 11/16/08 R: 02
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Golden Oval Eggs, filed an appeal from a decision dated December 8, 2008, reference 01. The decision allowed benefits to the claimant, David Amick. After due notice was issued, a hearing was held by telephone conference call on December 22, 2008. The claimant participated on his own behalf. The employer participated by Human Resources Administrator Darla Thompson.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

David Amick was employed by Golden Oval from August 14, 2003 until November 10, 2008 as a full-time husbandry maintenance worker. He received a written warning and 60-day probation on October 8, 2008, for failing to respond to a feeder-auger alarm when directed to do so by his supervisor. However, the supervisor was told by Mr. Amick at the time of the call that he was working on another auger at the time and the supervisor only responded, "okay." He did not direct the claimant one way or the other to attend to the auger alarm when he was done with his current job and instead later assigned him to another task.

On November 4, 2008, the claimant was working on some fans and when he was finished, thought he had turned them on. Instead he had turned on the heaters and 114 chickens died from excessive heat. Mr. Amick maintained there were many fans in a very large area and he was unable to tell the heaters were on instead of the fans when he went back to check. The switches on the control panel were not marked one way or the other as "heater" or "fan."

The claimant was discharged on November 10, 2008, for failing to double check he had turned on the fans and not the heaters.

REASONING AND CONCLUSIONS OF 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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has failed to present any evidence or testimony from the maintenance supervisor to rebut any of the claimant's assertions about what caused the heaters to be turned on instead of the fans or what prompted the prior warning.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of December 8, 2008, reference 01, is affirmed. David Amick is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css