

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL J SIMS**  
Claimant

**APPEAL NO. 07A-UI-07240-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEERE & COMPANY**  
Employer

**OC: 06/06/06 R: 02  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Daniel Sims, filed an appeal from a decision dated July 17, 2007, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 13, 2007. The claimant participated on his own behalf and with a witness Josh Overton. The employer, Deere & Company, participated by Industrial Relations Supervisor Michelle Bennett.

**ISSUE:**

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

**FINDINGS OF FACT:**

Daniel Sims was employed by Deere & Company beginning January 5, 2004, as a full-time assembler. On June 22, 2007, Supervisor Pat Schaffer reported to the industrial relations office that the claimant had been out of his work area without authorization, "loafing and loitering" on June 21 and 22, 2007. A disciplinary hearing was held on June 25, 2007, and Industrial Relations Supervisor Michelle Bennett determined the claimant had been guilty of loitering and loafing and suspended him for 30 calendar days.

The claimant maintained he had been out of his work area only to go to the bathroom once, once to get some ear plugs and other times only to get parts.

**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.

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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's witness had no first-hand knowledge of the claimant's activities on the days in question. The supervisor and manager, who allegedly witnessed the claimant "loitering and loafing" are still employment by Deere & Company but were not present to give testimony. 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 suspended. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

**DECISION:**

The representative's decision of July 17, 2007, reference 02, is reversed. Daniel Sims is qualified for benefits, provided he is otherwise eligible.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/css