

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE I CASTANEDA**  
Claimant

**APPEAL NO: 06A-UI-08102-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS DAIRY INC**  
Employer

**OC: 07/16/06 R: 01  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated August 10, 2006, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on August 30, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Tiffany Millikan participated in the hearing on behalf of the employer with witnesses, Julie Foley and Rob Scheitler. Exhibits One through Eight were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a sanitation worker for the employer from April 25, 2005, to July 17, 2006. The claimant sustained a work-related hand injury on January 12, 2006, and had restrictions on the use of his right hand. As of July 15, 2006, those restrictions included no continuous gripping with his right hand and gripping no more than 32 times during his shift.

The claimant worked within his restrictions and occasionally used his right hand to grip the trigger on the pressure hose. Supervisors believed the claimant had violated his work restrictions by frequently gripping the trigger on the pressure hose; and, as a result, the claimant was discharged for repeated safety violations on July 18, 2006.

**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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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).

No willful or substantial misconduct has been proven in this case. There is no proof that the claimant continuously gripped the hose or exceeded the 32-time limitation on July 15, 2006.

**DECISION:**

The unemployment insurance decision dated August 10, 2006, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw