

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN C PEREZ

Claimant

APPEAL NO. 10A-UI-06437-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS

Employer

OC: 03/21/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

West Liberty Foods (employer) appealed a representative's April 26, 2010 decision (reference 01) that concluded Juan Perez (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 22, 2010. The claimant participated personally. The employer participated by Nikki Bruno, Human Resource Generalist.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 15, 2009, as a full-time cooler operator.

After his hire the claimant was asked to complete a post-offer pre-placement physical form. The claimant answered "no" to questions asking him if had ever had any migraine or serious headaches, fainting or any other serious medical problem. The claimant was placed in a position with no physical restrictions. On February 22, 2010 the claimant told the employer he had a headache and was feeling faint. The employer asked the claimant about his condition. The claimant said that at a previous job he had a headache, blacked out and had pain near his heart. He went to a doctor and the doctor found nothing wrong. The employer sent the claimant home.

The claimant saw a physician on March 5, 2010. The physician returned him to work without restrictions on March 8, 2010. He worked until March 20, 2010, when the employer terminated him for falsifying his physical form.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

Misconduct serious enough to warrant a discharge is not necessarily serious enough to warrant a denial of unemployment benefits. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). In the present case, the employer must prove that the post-offer pre-placement physical form was an application for hire, the claimant willfully and deliberately falsified the form and the falsification could cause harm to the claimant, the employer or others. First of all, the claimant had been hired prior to completing the form. The form could not have been an application for hire. The employer was unable to determine what part of the statement

was false. In addition, the claimant's answers did not change the claimant's hiring conditions and, therefore, caused no harm. The claimant had received a release to return in the prior situation and received a release when the symptoms reoccurred. The employer has failed to prove the claimant was discharged for misconduct. Benefits are allowed.

DECISION:

The representative's April 26, 2010 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs