

**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**

**MATTHEW M MAGUIRE
3407 JACKSON ST
SIOUX CITY IA 51104**

**WELLS DAIRY INC
PO BOX 1310
LE MARS IA 51031-1310**

**RICHARD STURGEON
PO BOX 3372
SIOUX CITY IA 51102-3372**

**Appeal Number: 05A-UI-12072-CT
OC: 11/21/04 R: 01
Claimant: Appellant (2)**

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 for Misconduct

STATEMENT OF THE CASE:

Matthew Maguire filed an appeal from a representative's decision dated November 15, 2005, reference 03, which denied benefits based on his separation from Wells Dairy, Inc. After due notice was issued, a hearing was held by telephone on December 15, 2005. Mr. Maguire participated personally and was represented by Richard Sturgeon, a non-attorney. The employer did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Maguire was employed by Wells Dairy, Inc. from

January 31 until October 27, 2005 as a full-time production worker. On October 26, Mr. Maguire and a coworker, Carla, were packing candy bars at a conveyor belt. Carla was initially standing to the right of Mr. Maguire on the line. She apparently became dissatisfied with his pace or the way he was performing his job and crowded into his space from his left. In response, Mr. Maguire used his hand to push her on the hip. The employer considered this a violation of policy and, therefore, Mr. Maguire was discharged on October 27, 2005.

Mr. Maguire had not been warned about any matters during the course of his employment. The incident of October 26 was the sole reason for his discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Maguire was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Maguire was discharged because he used his hand to push a coworker out of his work space. There was no evidence that he intended to harm Carla or that his actions were motivated by any malice towards her. Nor was there evidence that he was trying to instigate a fight with her. His actions were more a knee-jerk response to her encroaching on his work space.

The evidence failed to establish that Mr. Maguire deliberately and intentionally acted in a manner he knew to be contrary to the employer's interests or standards. The administrative law judge is inclined to view the conduct as an isolated, good-faith error in judgment. This minor peccadillo is not sufficient to establish disqualifying misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reason stated herein, benefits are allowed.

DECISION:

The representative's decision dated November 15, 2005, reference 03, is hereby reversed. Mr. Maguire was discharged by Wells Dairy, Inc. but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs