

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES GONZALEZ**  
Claimant

**APPEAL NO: 10A-UI-07360-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 04-18-10**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 12, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 9, 2010. The claimant participated in the hearing. Monica Dyar, Human Resources Supervisor and Ron Swain, Maintenance Supervisor, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time mechanic for West Liberty Foods from July 20, 2009 to April 20, 2010. He worked from 5:00 p.m. to 5:30 a.m. four days per week. On April 9, 2010, it was reported that the claimant was observed taking excessive breaks. Employees' lunch breaks are 30 minutes long with two 15 minute breaks. He took his lunch break from 7:55 p.m. to 9:10 p.m. for a total of one hour and 15 minutes. He took a break from 11:37 p.m. to 11:57 p.m. for a total of 20 minutes and another one from 1:39 a.m. to 2:26 a.m. for a total of 47 minutes. The claimant was off the production floor for a total of two hours and 27 minutes, one hour and 17 minutes longer than allowed according to the employer's security cameras located throughout the plant and in the parking lot. Additionally, the claimant was asked to perform a task by Maintenance Supervisor Ron Swain over the radio and indicated he had better things to do and "didn't give a shit." His comment on the radio was also heard by another employee. Furthermore, he repeated the statement to Mr. Swain in the smoking shack a short time later. The claimant was suspended April 10, 2010, while the employer conducted an investigation. During the employer's investigation the excessive breaks and use of profanity were confirmed and another witness who was working next to the claimant said the claimant did not respond to a radio call and then turned his radio off and went to break at another point during that evening. After reviewing all of the information the employer terminated the

claimant's employment for taking excessive breaks and insubordination in using profanity when speaking to his supervisor.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

While the claimant testified he took a long lunch break April 9, 2010, because he was not feeling well, he did not mention that to Mr. Swain at the time or to Human Resources Supervisor Monica Dyar during her investigation, and did not have a good cause reason for his other long breaks. He denied using profanity when speaking to Mr. Swain, stating he said he "couldn't hear shit" over the radio, but then told Mr. Swain he did not "give a shit" about cleaning out the fry room when they were in the smoking shack. The claimant's actions were inappropriate and unprofessional and because he was insubordinate during the same shift that he took excessive breaks his employment was terminated. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The May 12, 2010, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs