

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN CARLOS MARTINEZ
Claimant

APPEAL NO. 090-UI-16759-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWFIT & COMPANY
Employer

OC: 06/07/09
Claimant: Respondent (1)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 8, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice a telephone hearing was held on December 14, 2009. Claimant participated. The claimant was represented by Aaron Bernard, attorney at law. Employer participated by Tony Luse, employment manager. The record consists of the testimony of Tony Luse; the testimony of Juan Carlos Martinez; and Employer's Exhibits 1-2.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a pork producer and has a plant located in Marshalltown, Iowa. The claimant was hired as a production worker on May 4, 2009. The claimant's last day of work was June 9, 2009. He was terminated on June 9, 2009, for throwing away edible product into an inedible container.

The claimant and another individual worked on the line and each was responsible for every other loin of meat that came by. The claimant's co-worker left the line to use the bathroom and the claimant felt that he was responsible for handling every piece of meat that came down the line. He was afraid to stop the line. A piece of meat nearly hit the floor and the claimant tossed the meat into the inedible bin so that he could keep up. Another supervisor saw him do this and an argument ensued. The claimant's supervisor came up on the argument and the claimant was taken to the office and terminated.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The definition of misconduct excludes ordinary negligence or a good faith error of judgment. The employer has the burden of proof to show misconduct.

In this case, the claimant, a probationary employee who had been only been working a little over one month, was terminated for throwing away a piece of meat. The claimant testified that he threw the piece of meat into the inedible bin so that he could keep up and not stop the line. A co-worker had left to use the bathroom and the claimant ended up working by himself. He believed that he had to work every piece of meat that came down the line, even though he was responsible for every other piece of meat. He was worried about stopping the line and made an unwise decision to throw a piece of edible meat into the inedible bin. This led to an argument with a supervisor and the claimant's supervision.

After carefully considering all of the evidence in this case, the administrative law judge concludes that the employer has not shown misconduct that disqualifies the claimant from receiving unemployment insurance benefits. The claimant made an error when he threw away

the piece of meat, but there is no pattern of conduct to suggest that his action was willful. He did not want to stop the line and get in trouble. His inexperience and frustration likely explain his actions on June 9, 2009. Since there is insufficient evidence of misconduct, benefits will be allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated July 8, 2009, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs