

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL E MORSE
Claimant

APPEAL NO. 09A-UI-04802-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

**Original Claim: 02/22/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Beef Products (employer) appealed a representative's March 17, 2009 decision (reference 01) that concluded Michael Morse (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 April 22, 2009. The claimant was represented by Bradley Strouse, Attorney at Law, and participated personally. The employer participated by Rick Wood, Human Resources Manager, and Jennifer Stubbs, Human Resources Benefits Supervisor.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on March 1, 2007, as a full-time quality assurance supervisor. The claimant signed for receipt of the employer's handbook on March 1, 2007. The handbook contained an attendance policy. The attendance policy indicates that a worker must notify his supervisor directly one hour prior to the start of the shift. The claimant's supervisor frequently notified the claimant by text when the supervisor was tardy or absent.

In August 2008, the claimant notified the employer of his absence due to illness and vomiting by personally sending a text message from his telephone to the supervisor's telephone. The claimant had done this twice before without incident. The claimant thought he had followed the policy and was being considerate of the supervisor. The supervisor would have been asleep prior to 2:30 a.m. When the claimant had called the supervisor's number at that time of the morning in the past, the supervisor did not answer the telephone. The claimant had to leave a voice message. The employer issued the claimant a written warning on August 27, 2008, for leaving a text message and failing to actually call the supervisor's number and leave a voice message.

On February 10, 2009, the claimant was supposed to work the 3:00 a.m. to noon shift. He was ill in the night, took medication, and slept through the start of his shift. At 4:30 a.m., the claimant awoke and telephoned the plant supervisor. The claimant's regular supervisor called the claimant. The claimant could not properly report his absence because he was ill and medicated.

On February 20, 2009, the claimant started his shift at 10:00 p.m. He worked until 7:00 a.m. on February 21, 2009. At approximately 6:30 a.m., the claimant was called away from his regular work area to help a subordinate. He notified his supervisor by radio that he was away from the area. At 6:45 a.m., while the claimant was away, the supervisor printed labels for 32 pallets of product. The incorrect year was printed on the labels. The supervisor did not notice, nor did the supervisor check the labels after they were attached to the product. At 7:00 a.m., the claimant told the supervisor by radio that he was leaving for the day.

On February 23, 2009, the employer terminated the claimant for failure to properly verify the labels prior to shipping. Incorrect labeling occurs once or twice per week. Rarely is a person terminated for incorrect labeling. No other employees were terminated in connection with the February 21, 2009, incident.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct at the hearing. The claimant had nothing to do with the incorrect labeling that occurred on February 21, 2009. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative’s March 17, 2009 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw