

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARIN R FLUGGE**  
Claimant

**APPEAL NO. 10A-UI-12893-S2T**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**KERRY INC**  
Employer

**OC: 08/15/10  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Darin Flugge (claimant) appealed a representative's September 10, 2010 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Kerry (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 2, 2010. The claimant participated personally. The employer participated by Heather Hobert, Human Resources Representative, and Chris Blue, Supervisor.

**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 having considered all of the evidence in the record, finds that: The claimant was hired on February 4, 2009, as a full-time production team member. The claimant signed for receipt of the employer's handbook on February 4, and March 31, 2009. On February 23, 2010, the claimant had Food Safety Training. The employer issued the claimant a written warning on August 24, 2009, for stating he added an ingredient to the food when he did not. On August 7, 2010, the employer issued the claimant a written warning for taking three times longer than usual to clean equipment. The employer notified the claimant that further infractions could result in termination from employment.

The claimant started his shift at 6:00 p.m. on August 16, 2010, and production started at 7:15 p.m. The claimant was required to perform a metal detector test every hour during his shift. The claimant noticed right away that the metal detector was malfunctioning. Even though it was not functioning properly, the claimant recorded every hour that the food items "Passed" the metal detector test. He recorded the time that the food passed the inspection and his signature. The claimant never recorded that the food "Failed" inspection. At 2:15 a.m. on August 17, 2010, the claimant told his supervisor that the metal detector had been malfunctioning during the entire shift. Maintenance was called to fix the machine. On

August 20, 2010, the employer terminated the claimant for failing to properly use the equipment and falsifying the inspection document at least five times.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was 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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. He failed to follow instructions twice and received two warnings. During his last shift, the claimant failed to follow instructions at least five times. The claimant's disregard of the employer's interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's September 10, 2010 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw/kjw