

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS D RAMSEY
Claimant

APPEAL NO. 12A-UI-12227-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSCEOLA FOOD LLC
Employer

OC: 09/16/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Osceola Food, L.L.C., filed a timely appeal from a representative's decision dated October 8, 2012, reference 01, which held claimant eligible to receive benefits. After due notice, a telephone hearing was held on November 6, 2012. Claimant participated. The employer participated by Mr. Brent Banwart, Human Resource Coordinator; Justin Smith, Supervisor, and Raul Saucedo, Team Lead.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Douglas Ramsey was employed by Osceola Food, L.L.C. from January 28, 2008 until September 19, 2012 when he was discharged from employment. Mr. Ramsey worked as a full-time production laborer and was paid by the hour. His immediate supervisors were Justin Smith and Raul Saucedo.

On September 18, a company worker complained about the manner in which Mr. Ramsey was placing hams on a company conveyor belt. The claimant was placing hams "side by side" causing other workers difficulty in removing the hams from the conveyor belt at their work stations. Supervisor Justin Smith was called to the area and instructed Mr. Ramsey to place the hams end to end. Mr. Ramsey did not willingly follow the work directive and instead argued that the manner that he was placing the hams on the conveyor was correct. Subsequently, the directive to place the hams end to end was confirmed by Raul Saucedo, another of the claimant's supervisors. Approximately five minutes later supervisors noted that the hams were still being placed side by side by Mr. Ramsey. Although the claimant had been instructed by two different supervisory personnel to place the hams end to end. The claimant's conduct caused the line to be stopped and when Mr. Ramsey continued to be argumentative about

whether he should follow the work directive, claimant was taken to the company's human resource offices.

Mr. Ramsey continued to argue the issue in the company's human resource offices. The employer considered the claimant's conduct to be insubordinate. Because the claimant had received two previous warnings within the one-year period, he was subject to discharge under company policy. Mr. Ramsey was discharged based upon his conduct that day and because he had violated the company policy which requires termination of employees who receive three warnings within a one-year period.

It is Mr. Ramsey's position that Mr. Smith was a new supervisor and that he was merely explaining to Mr. Smith the proper way of placing hams on the conveyor belt. It is claimant's further position that in addition to Mr. Smith being a new supervisor, the product and conveyor speed were new and he was merely attempting to adapt his work to those changes. It is Mr. Ramsey's further position that he was not discharged for misconduct but because of a personality conflict with the supervisors.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the evidence in the record establishes that the claimant was unwilling to follow repeated reasonable and work-related directives given to him by two supervisory personnel on September 18, 2012. Because of an employee complaint, the claimant had been directed to change the manner in which he was placing hams on a conveyor belt. Mr. Ramsey elected to repeatedly argue the issue instead of complying. Later supervisors determined the claimant continued to place the hams on the conveyor belt in the wrong way even after being specifically advised to place the hams end to end. Although the claimant had been instructed to place the hams end to end by two supervisors, he continued to object to the directive publicly arguing the issue with his supervisors both on the production floor and in the company's human resource offices. Because the claimant had received two previous warnings that year he was subject to discharge from employment. In issuing the work directives the supervisors took into consideration the work factors including conveyor speed and the product being used.

The claimant's repeated unwillingness to follow a reasonable and work-related directive showed a willful disregard for the employer's interest and standards of behavior and thus was disqualifying conduct under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits,

as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated October 8, 2012, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs