

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIGUEL NAVARRETE
Claimant

WEST LIBERTY FOODS LLC
Employer

APPEAL NO. 12A-UI-07824-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/03/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated June 21, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 12, 2012, in Davenport, Iowa. The claimant participated personally. The claimant was represented by Robert De Kock, attorney at law. The employer participated by Nikki Bruno, human resources supervisor; Kathy Truelson, human resources manager; Brian Ralston, production supervisor; and Dwight Ferguson, safety manager. The employer was represented by Danny Cornell, attorney at law. The record consists of the testimony of the following individuals: Nikki Bruno; Brian Ralston; Dwight Ferguson; and Miguel Navarrete. Employer's Exhibits 1 and 2 were admitted into evidence. Argentina Moncivais served as Spanish interpreter for the claimant.

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 meat processing facility located in West Liberty, Iowa. The claimant was hired on September 24, 2007. His job was stuffer operator. He was a full-time employee. His last day of actual work was May 22, 2012. He was placed on unpaid suspension pending an investigation. He was terminated on May 29, 2012, for violation of the employer's lock out/ tag out rule.

The incident that led to the claimant's termination occurred on May 22, 2012. An employee named Danny Espinoza was washing a machine on line 4. Line 2 was also down. Brian Ralston, the production supervisor, told the team, which included the claimant, to get line 2 going. The claimant told Mr. Espinoza to go to line 2. Another employee, Angel Cobol, then took over for Mr. Espinoza. The claimant's responsibility was to take the dirty water from the washing and dispose of it.

Mr. Espinoza had placed his lock out/tag out on the machine. The machine was not energized. He did not remove the lock out/tag out. Neither Mr. Cobol nor the claimant put their own lock out/tag out on the machine. This is a violation of the employer's rules on lock out/ tag out. The claimant did not believe he had to put a lock out/tag out on the machine because he was not working directly on the machine. The claimant had been trained in lock out/tag out procedures by the employer.

The claimant had never been disciplined previously for a safety violation or a lock out/tag out violation.

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 deliberate breach of the employee's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion or negligence in isolated instances. The employer has the burden of proof to show misconduct.

Employers have a responsibility for providing a safe workplace and lock out/tag out procedures are in place to protect the health and safety of workers. The employer, to its credit, strictly enforces these procedures in its production facility. The issue in this case is not whether the

employer made a good business decision to terminate the claimant. Rather the issue is whether the claimant's failure to put his own lock out/tag out on the machine is misconduct. The administrative law judge has carefully considered this matter and has concluded that the claimant's conduct represents an error of judgment or discretion as opposed to a deliberate or volitional disregard of the rule. The claimant testified credibly that he did not think his own lock out/tag out was necessary because he did not have his hands inside the machine. The testimony on this matter is in dispute but regardless of what version is accepted, the claimant made a bad choice. There is no evidence that claimant intended to materially breach his duty to the employer. In addition, there have been no previous safety violations and no violations of the lock out/tag out provisions. This is further proof that the claimant did not engage in deliberate and willful conduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated June 21, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs