IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

GARY A HEGINGER
516 SMITH ST
LAKOTA IA 50451

HORMEL FOODS CORPORATION
C/O JON-JAY ASSOCIATES
PO BOX 182523
COLUMBUS OH 43218-2523

Appeal Number: 05A-UI-05598-RT
OC: 05/01/05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Gary A. Heginger, filed a timely appeal from an unemployment insurance decision dated May 19, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on June 14, 2005, with the claimant participating. Pete Von Ruden, Manager of the employer's location in Algona, Iowa, where the claimant was employed, and Carl Polson, Packaging Supervisor, participated in the hearing for the employer, Hormel Foods Corporation. Employer's Exhibits One and Two were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses, and having examined all of the evidence in the record, including Employer's Exhibits One and Two, the administrative law judge finds: The claimant was employed by the employer as a full-time general worker from December 5, 2000, until he was discharged on May 3, 2005. The claimant was discharged for insubordination and, in particular, for failing to follow the instructions or directions of a supervisor and accumulating three written notices of disciplinary action, which, according to the employer's policy, results in a discharge. On April 19, 2005, the claimant, although he had a beard, twice refused or failed to put on a beard net, even though it is required by the employer's policies and he was twice instructed by a supervisor to do so. The employer produces food items and is required by federal requirement to maintain certain safety standards, as shown at Employer's Exhibit One. Among those standards, the employer has plant work rules that require all employees to wear hair nets, as furnished by the company, and beard nets by those employees with beards, as shown at Employer's Exhibit One. The employer also has a sanitation handbook, as shown at Employer's Exhibit One, that provides for hair restraints. The claimant is covered by a collective bargaining agreement, also shown at Employer's Exhibit One, that provides that upon a third written notice, the employee will be discharged. The claimant received copies of these documents and signed acknowledgments therefore, also as shown at Employer's Exhibit One.

On April 19, 2005, the claimant was working in the packaging area, where a beard net is required. The claimant had a beard but did not have a beard net. Carl Polson, Packaging Supervisor, saw the claimant and told the claimant at 12:45 a.m. to put on a beard net. The claimant asked if Mr. Polson was "serious." Mr. Polson said that he was. Nevertheless, the claimant did not put on a beard net. The claimant was operating a fork truck and could have taken the minute or two it required to get his beard net but did not. At 1:01 a.m. Mr. Polson again saw the claimant without a beard net and again told the claimant to get a beard net. The claimant still did not, and at 1:14 a.m. Mr. Polson saw the claimant for a third time and again, for a third time, told the claimant to get a beard net. The claimant then did so. For these actions, the claimant was given a written notice of disciplinary action and then was discharged.

On November 24, 2004, the claimant received a second written notice of disciplinary action for an unsafe act when he did not lock out equipment upon which he was working. The claimant conceded that he did not lock out the equipment. On October 15, 2004, the claimant received his first written notice of disciplinary action for joy-riding on a pillow pack supply cart. The claimant seemed to imply, at least, that he was doing something inappropriate with the pillow pack supply cart because the claimant merely responded that his feet were touching the ground. However, the claimant did deny that he was joy-riding on the pillow pack supply cart. The claimant also received three written warnings. On September 7, 2004, the claimant received a written warning for an unsafe act when he failed to follow instructions by sticking his hand into feed. The claimant conceded that he failed to follow such instructions. On May 1, 2004, the claimant received a written warning for not removing his tongue ring while on the pack floor. The claimant conceded that he had his tongue ring in at that time and should not have. On January 6, 2003, the claimant got a written warning for a failure to follow instructions when he committed an unsafe act in running a conveyor belt. The claimant did not remember this warning.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on May 3, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. There is really little dispute about the incident on April 19, 2005, that gave rise to the claimant's discharge. The claimant twice refused and failed to put on a beard net even though he was instructed to do so, and even though the employer's policies required such a beard net, as shown at Employer's Exhibit One. The claimant testified that he could not do so because he was operating a fork truck, but this is not credible. The evidence establishes that it would only have taken between one and two minutes for the claimant to get a beard net, and he could have left his work briefly to get the beard net. The claimant was not working on an assembly or production line where he could not leave because of the running of the line. Carl Polson, Packaging Supervisor, one of the employer's witnesses, was the person who instructed the claimant three times to put on a beard net. On the first occasion, the claimant

asked Mr. Polson if he was serious. Mr. Polson said that he was. Nevertheless, the claimant refused. The claimant denies asking Mr. Polson if he was serious, but this is not credible. Mr. Polson's direct forthright testimony outweighs that of the claimant's, who was equivocal and less credible. In any event, the claimant was again instructed to put on a beard net and refused a second time. The claimant had a beard. He attempted to testify that perhaps the beard was too short to require a hair net, but the employer's policies are clear that a beard net is required for those employees with a beard and the claimant admitted that he had a beard. More compelling, the claimant was specifically instructed to put on a beard net and did not. The claimant had received two prior written notices, the most recent on November 24, 2004, for not locking out equipment, and the claimant concedes he did not do so. The other one was for joy-riding on a pillow pack supply cart, and the claimant seems to deny this, but his denial is not credible because it was equivocal and the only statement the claimant made was that his feet were touching the ground. In addition, the claimant received three written warnings for behavior that the claimant admits to. The warnings and notices appear at Employer's Exhibit Two.

Because of the claimant's written warnings and two prior written notices, the employer's clear policies, and the clear instructions by a supervisor to put on his beard, the administrative law judge concludes that the claimant's failure to do so immediately, coupled with his other actions giving rise to his notices and warnings, were deliberate acts or omissions constituting a material breach of the claimant's duties and obligations arising out of his worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are, at the very least, carelessness or negligence in such a degree of recurrence all as to establish disqualifying misconduct.

The claimant sought to blame his failures on a head injury that occurred on October 20, 2002, but the evidence establishes that the claimant was released by his physician to return to work in December of 2002. Surely the claimant's head injury would have been healed in over two years after the claimant had been released by his physician and, surely, the claimant would not still be suffering from memory loss. If the claimant had such severe memory loss, the claimant's physician would not have released the claimant to return to work. The claimant's testimony about his head injury causing memory loss is not credible and taints his entire testimony.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of May 19, 2005, reference 01, is affirmed. The claimant, Gary A. Heginger, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

kjw/pjs