

**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**

**CHARLES KLEIN
407 MADISON
REMSSEN IA 51050**

**WELLS DAIRY INC
PO BOX 1310
LEMARS IA 51031-1310**

**RICHARD STURGEON
PO BOX 3372
SIOUX CITY IA 51102-3372**

**Appeal Number: 04A-UI-03667-A
OC: 02/15/04 R: 01
Claimant: Respondent (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 96.5-2a - Discharge

STATEMENT OF THE CASE:

Wells Dairy, Inc., filed a timely appeal from an unemployment insurance decision dated March 26, 2004, reference 01, which allowed benefits to Charles Klein. After due notice was issued, a telephone hearing was held in Sioux City, Iowa on September 23, 2004 with Mr. Klein participating and being represented by Richard Sturgeon. Senior Human Resources Generalist Becky Wahlberg participated for the employer. Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Charles Klein was employed by Wells Dairy from

April 12, 1993 until he was discharged February 11, 2004. He last worked as a CIP operator. On February 5, 2004, Mr. Klein inadvertently began washing out a line that was still connected to a tank containing product because he misunderstood instructions from a co-worker. As soon as he realized the error, he shut off the equipment. A computer report was automatically generated indicating that an incomplete washing process had been commenced. Pursuant to prior oral instructions, Mr. Klein initially threw away that report.

A question soon arose as to whether any chemicals or water had contaminated the product in the tank attached to the line. Mr. Klein volunteered that the report was in the wastebasket and that it might contain the information that the company sought. Another employee retrieved the document after Mr. Klein had announced where it could be found.

At the time of this incident, there was no written standard operating procedure dictating whether computer reports of incomplete washing cycles needed to be maintained.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Klein was discharged for willful misconduct. It does not.

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).

Ms. Wahlberg had no first-hand information. She did not contradict the claimant's testimony that there was no written instruction that documents such as the one in question be kept. The evidence establishes that Mr. Klein had received oral instructions that such documents could be discarded if the wash cycle was not completed and that he volunteered the information as to the location of the particular report. The administrative law judge concludes that at worst this was an isolated instance of poor judgment by the claimant. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated March 26, 2004, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

kjf/b