

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONALD P MCKIGNEY**  
Claimant

**APPEAL NO. 10A-UI-06940-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESTAR FOODS INC**  
Employer

**Original Claim: 04/04/10  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated April 28, 2010, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on June 29, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Ashley Bautista participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a cook for the employer from September 2007 to April 1, 2010. Arthur Flatt, the manager, was the claimant's supervisor. The claimant's job duties included making sure dishes and utensils were clean before they were put away. The claimant performed these duties to the best of his ability and never deliberately put dirty dishes and utensils away.

On March 29, 2010, there was an outside audit that was done, which included an inspection of the kitchen. The audit found some deficiencies in cleaning of some scoops and dishes.

On April 2, 2010, Flatt discharged the claimant due to the cleaning deficiencies revealed in the audit.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the

employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The employer has not met its burden of proving the claimant was discharged for disqualifying misconduct. No willful and substantial misconduct has been proven in this case. At most, the evidence reflects unsatisfactory work performance or isolated instance of negligence that do not rise to the level of willful misconduct in culpability.

**DECISION:**

The unemployment insurance decision dated April 28, 2010, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw