

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE CROUCH
Claimant

APPEAL NO: 11A-UI-04105-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOODS INC
Employer

**OC: 01-23-11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 2, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 25, 2011. The claimant participated in the hearing. Jim Martin, Store Director, participated in the hearing on behalf of the employer. Department's Exhibit D-1 and Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision allowing benefits to the claimant was mailed to the employer's last-known address of record on March 2, 2011. The employer received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 12, 2011. That date fell on a Saturday, however, so the appeal was due March 14, 2011. The appeal was not filed until March 25, 2011, which is after the date noticed on the disqualification decision. The employer's appeal was late because it was sent to the corporate office and received March 21, 2011, which was after the due date. Consequently, the administrative law judge concludes the employer's appeal is timely as the representative's decision was not received until after the due date.

The claimant was employed as a part-time night merchandiser for Dahl's from January 19, 2011 to January 20, 2011. The claimant indicated on his employment application that he could stand for a full eight-hour shift; engage in repetitive bending; engage in repetitive twisting of his hands or body; was able to routinely and repetitively lift up to 50 pounds to waist height; and was able to routinely and repetitively lift up to 20 pounds to heights about his head (Employer's Exhibit One). He has no standing, lifting, bending or twisting restrictions or any restrictions of any kind. The claimant worked the first night and testified he had no problems standing, lifting, bending or twisting his body and hands during his shift. The night manager, however, reported to the store manager that the claimant sat down to stock the bottom shelves and could only lift a

maximum of 20 pounds and could not lift anything over his head. The claimant denied that any of those events occurred. The store manager determined the claimant was not truthful on his application and was unable to perform the essential functions of his job and terminated his employment January 20, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. 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's witness relied on what he was told by the night manager while the claimant, a first-hand witness, credibly denied the night manager's statements that he could not lift 50 pounds to waist level and 20 pounds over his head or that he stated he had medical restrictions preventing him from lifting. The claimant testified he did not have any type of medical restrictions and could perform

the essential functions of his job. There is not enough evidence to conclude he was not honest on his employment application. Because the claimant's first-hand testimony must be given more weight than the employer's second-hand testimony, the administrative law judge must conclude that the claimant's actions do not constitute disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The March 2, 2011, reference 01, decision is affirmed. The employer's appeal is timely. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css