

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMUEL HOLMES
Claimant

APPEAL NO. 10A-UI-14665-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 09-26-10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 22, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 18, 2011. The claimant participated in the hearing. Monica Dyar, Human Resources Supervisor, and Ron Swain, Maintenance Supervisor, participated in the hearing on behalf of the employer. Employer's Exhibits 1 through 16 were 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: The claimant was employed as a full-time mechanic for West Liberty Foods from August 9, 2010 to October 1, 2010. After the sanitation department finishes with the rooms, it releases them to the maintenance department, which enters the floor as a team to assemble the equipment. Some specific duties are assigned by Maintenance Supervisor Ron Swain. On September 25, 2010, the claimant was directed by Mr. Swain to be "attached to the hip" of the employee assigned to set up the fry room. After the sanitation department releases the room, Mr. Swain walks the floor and monitors the work being done. He noticed he had not seen the claimant for awhile and neither had anyone else, so Mr. Swain tried to reach him on the radio several times to no avail. Eventually, the claimant did respond to a radio call and reported to the fry area. Mr. Swain asked where he had been and the claimant stated he was helping two team members set up. However, Mr. Swain had walked the floor without seeing him and, when asked, the other employees said they had not seen him during that time frame. Mr. Swain had not been away from the two employees the claimant claimed to be helping for more than two to three minutes, so he did not believe the claimant's answer. Additionally, Mr. Swain saw the claimant enter from a totally different direction than if he had been where he was supposed to be. Mr. Swain also asked two other employees if they saw the claimant and they indicated the last time they saw him he was in dry storage. There is no reason for a mechanic to ever be in dry storage according to Mr. Swain. Mr. Swain asked the claimant where he had been and the claimant

named two employees he had been with and Mr. Swain said, "No you weren't," and the claimant continued to the fry room. Later that day, Mr. Swain met with the claimant and expressed his concerns and the claimant did not provide much of a response. The claimant had been there long enough to know where to be when the lines were being set up and was also assigned a trainer to follow. Mr. Swain had also heard rumors that the claimant was disappearing during setup during the last week. The employer determined the claimant was in dry storage avoiding work for approximately 40 minutes and made a habit of not answering radio calls, which he would have heard if he was with his trainer, and decided to terminate his employment effective October 1, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

While the claimant denies he was in dry storage for 40 minutes, the employer's evidence establishes he was not where he was supposed to be for a substantial period of time. He was instructed to be with a trainer and be "attached at his hip" but did not do so, or he would have heard the radio calls asking for him. Mr. Swain could not find the claimant, and his co-workers stated they had not seen him, either, and there were rumblings that he was disappearing during setup. Consequently, the administrative law judge concludes the claimant's conduct

demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The October 22, 2010, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw