

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

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CONAGRA FOODS PACKAGED FOODS
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Appeal Number: 06A-UI-04932-DWT
OC: 04/02/06 R: 03
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 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Conagra Foods Packaged Foods Company, Inc. (employer) appealed a representative's April 26, 2006 decision (reference 01) that concluded Scott D. Rupert (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 8, 2006. The claimant participated in the hearing. Jean Wood, the human resource manager and safety director, and Pete Shepherd appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 2, 1998. The claimant worked as a full-time packaging technician. At various times during his employment the claimant worked as a team leader. On March 23, 2006, the claimant's supervisor was not at work and the claimant was the acting team leader. As a result of being the team leader, the claimant was responsible for authorizing other employees to enter a confined space if necessary.

An employee, J.T., contacted the claimant by radio around 10:00 a.m. and asked the claimant to come to the tank farm where J.T. was working. The claimant was busy and did not go to the tank farm. About 30 minutes later, J.T. went to the claimant and asked how his work was going. The claimant started "chewing out" J.T. for not doing his work and for taking advantage of the claimant. The claimant became upset and was angry at J.T. While the claimant reprimanded J.T., he knew another employee, S.A. was in the area. After J.T. left, the claimant went about his business. J.T. did not ask the claimant to sign any paperwork for a confined space entry or that J.T. planned to make such an entry.

The claimant did not know until a day later that J.T. made the confined space entry without his authorization or the authorization of any other authorized personnel. S. A. was present when J.T. made the entry because he acted as J.T.'s attendant. S.A. and J.T. signed the necessary paperwork for a confined area entry. J.T. made the confined space entry even though he had not obtained any supervisor's authorization to do so.

On March 24, Shepherd asked the claimant about the paperwork for the confined space entry because no one had signed the paperwork as the authorizing supervisor. The claimant declined to sign the paperwork because he had not given J.T. authorization to make the entry.

After talking to J.T. and S.A., the employer concluded the claimant knew or should have known J.T. planned to enter a confined space and he failed to verify the conditions or make sure it was safe for J.T. to make the entry. The employer concluded the claimant failed to perform the necessary procedures to ensure the safety of an employee who made a confined space entry. The employer discharged the claimant on April 6, 2006, for this violation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.-5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a

right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. Even though J.T. and S.A. reported that the claimant knew J.T. was going to make a confined space entry, the claimant's testimony that he had no knowledge J.T. made the entry or even asked the claimant to sign the permit for a confined space entry is credible. Since neither J.T. nor S.A. testified at the hearing, the claimant's testimony must be given more weight than the employer's reliance on hearsay information from potential witnesses who did not testify at the hearing. Since the claimant did not authorize the confined space entry and J.T. did not ask the claimant to sign the permit, the claimant did not commit work-connected misconduct. Even if the claimant unconsciously knew or understood J.T. planned to make a confined space entry, he could reasonably assume J.T. obtained another supervisor's authorization to make the entry. The claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 26, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of April 2, 2006, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/cs