

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD WALSH
Claimant

APPEAL NO: 09A-UI-03237-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 01-25-09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 20, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 25, 2009. The claimant participated in the hearing. Jean Spiesz, Human Resources Manager, participated in the hearing on behalf of the employer.

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 maintenance mechanic for West Liberty Foods from April 5, 2004 to January 23, 2009. The employer received a complaint from an employee that the claimant and two other employees picked him up and put him in a laundry cart, pushed it around and taunted him about being in the cart. The same employee also told the employer that employees often got in the laundry cart and pushed each other around. On January 23, 2009, the employer talked to the claimant and the other named co-workers about placing their co-worker in the laundry cart against his will and placed them on suspension while it investigated the situation. The employer determined the claims were true and terminated the claimant's employment as well as that of other employees involved. The claimant testified he was present when the incident occurred but did not participate in putting his co-worker in the laundry cart and told the others to "leave the kid alone." He also stated that horseplay was routine among other employees but he did not participate and that employees teased each other, threw things at each other and shoved the cart at each other. He further testified that employees wear encapsulated suits and the only thing visible when they are in their suits are their eyes.

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). While horseplay is prohibited in the employer's workplace and is a terminable offense, the claimant credibly testified that he did not participate in putting his co-worker in the laundry cart or any of the other horseplay that was routine during his shift. The co-worker who was placed in the cart did not participate in the hearing and the claimant's first hand testimony and denial carries more weight than that of the employer's second hand testimony. Additionally, the employees wear encapsulated suits with only their eyes visible and it is possible that the claimant was misidentified. Consequently, the administrative law judge must conclude that the employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The February 20, 2009, reference 02, decision is reversed. 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/pjs