

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEONARDO D WATTS
Claimant

APPEAL NO. 12A-UI-08868-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EARTHGRAINS BAKING COMPANIES INC
Employer

**OC: 06/17/12
Claimant: Appellant (2-R)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated July 19, 2012, reference 01, which held the claimant not eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on August 16, 2012. The claimant participated. Participating on his behalf was Mr. Joseph Ferrentino, attorney at law. The employer, although duly notified, indicated it would not be participating in the hearing.

ISSUE:

At issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Leonardo Watts was employed by Earthgrains Baking Companies, Inc. from February 2009 until May 2, 2012, when he was discharged from employment. Mr. Watts worked as a full-time production worker and was paid by the hour. His immediate supervisor was John Schultz.

The claimant was discharged under the company's attendance policy when the employer believed that the claimant had exceeded the permissible number of attendance infractions. The claimant had been previously placed on a last-chance agreement when the employer considered that he had an attendance violation by reporting to work earlier than his scheduled work shift to replace another worker. Rather than be off work for an extended period of time without pay, the claimant agreed to a last-chance agreement.

The final incident that caused the claimant's discharge took place when Mr. Watts did not report for scheduled work. The claimant usually did not work on the day of the week that the company had unexpectedly scheduled the claimant to work on. Mr. Watts was unaware that he had been scheduled to work that day, and therefore did not report.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter, the claimant appeared personally and testified under oath that he was placed on a last-chance agreement because he felt that he had no alternative, as he could not remain in

suspension status without pay for an extended period. The final incident that resulted in the claimant's termination took place when Mr. Watts did not report for a scheduled shift that he was unaware of. The evidence in the record does not establish the claimant was placed on notice that he was to report to work on the final day. The claimant testified that he was unaware that he was to work and therefore did not report.

Based upon the evidence in the record, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing intentional, disqualifying misconduct on the part of the claimant. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 19, 2012, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw