

**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**

**GREGORY W BROMWELL  
400 MAIN ST  
CALAMUS IA 52729**

**WEST LIBERTY FOODS LLC  
207 W 2<sup>ND</sup> ST  
PO BOX 318  
WEST LIBERTY IA 52776**

**Appeal Number: 05A-UI-00811-CT  
OC: 12/19/04 R: 04  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

West Liberty Foods filed an appeal from a representative's decision dated January 12, 2005, reference 01, which held that no disqualification would be imposed regarding Gregory Bromwell's separation from employment. After due notice was issued, a hearing was held by telephone on February 9, 2005. Mr. Bromwell participated personally and offered additional testimony from Mike Smith. The employer participated by Jaime Ruess, Human Resources Manager, and Don Ephgrave, Director of Operations. Exhibit One was admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Bromwell was employed by West Liberty Foods from April 5, 1999 until November 29, 2004. He was last employed full time as plant superintendent, a position he had held since January of 2004. On November 22 at approximately 8:30 a.m., Mr. Bromwell was made aware that an auger in the "offal" room was not working properly. Maintenance was notified and the production line was shut down. Mr. Bromwell notified Don Ephgrave, director of operations, that there was a problem but indicated the problem would be corrected shortly. Maintenance diagnosed the problem as the gear box for the auger. Because the production crew was scheduled to have a break shortly, Mr. Bromwell brought in additional people for production and restarted the line. He believed the additional manpower would allow him to keep ahead of the problems caused by the broken auger.

Once the line was restarted, the drains clogged, causing the room to flood. The water, containing turkey viscera, flowed from the room and into the storm drains. Mr. Bromwell shut the line down again and maintenance took steps to pump the water out of the room. After that was completed, the line was restarted. However, the pumps could not keep up with the water and the room flooded again. Mr. Bromwell again stopped the line. During the incident, the director of maintenance and the employer's environmental manager were made aware of what was occurring. Mr. Bromwell was suspended on November 22 pending an investigation of the matter. The employer felt he was guilty of gross misconduct for not shutting the production line down until the problem with the auger was fixed. There were no written procedures that Mr. Bromwell should have followed and he had never been faced with such a problem in the past. He was notified of his discharge on November 29, 2004. The above matter was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Bromwell was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Bromwell was discharged because the employer felt he did not handle the problem of November 22 properly. There were no written procedures to cover what steps he should have taken and he had not experienced such a problem in the past. When he spoke with Mr. Ephgrave the morning of November 22, Mr. Bromwell did not know that the problem would escalate to the extent it did. Given his lack of experience, Mr. Bromwell did not fully appreciate the potential consequences of his decisions to resume the production line. He and others were working to fix the auger and to handle problems caused by running the line without the auger working properly. Mr. Bromwell was making a good-faith effort to maximize production while handling the resulting problems.

The administrative law judge concludes that Mr. Bromwell's conduct of November 22 constituted a good-faith error in judgment. He did not deliberately or intentionally disregard the employer's interests or standards. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

#### DECISION:

The representative's decision dated January 12, 2005, reference 01, is hereby affirmed. Mr. Bromwell was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/s