

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TOMMY J FULLER**  
Claimant

**APPEAL NO: 13A-UI-10038-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGRI STAR MEAT & POULTRY LLC**  
Employer

**OC: 03/10/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated August 23, 2013, reference 01, that held the claimant was not discharged for misconduct on August 5, 2013, and benefits are allowed. A telephone hearing was held on October 21, 2013. The claimant, and Attorney, Jeff Clements, participated. Diane Guerrero, HR Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant was hired on February 22, 2010, and last worked for the employer as full-time production on August 5, 2013. The employer uses progressive discipline to let an employee know there is an attendance problem.

The employer issued claimant a written warning for absences on May 31, 2013 that included two for reported illness and one for a no-call/no-show. The employer does accept doctor excuses for absences due to illness. The employer suspended claimant for attendance on June 24.

The employer issued claimant a written warning notice on July 29, 2013 for leaving work early without permission on July 26 and 28. Claimant agreed with the employer statement he was expected to work the scheduled shift and failed to do so both days. As to further consequences should the incident occur again: progressive discipline to include immediate term. Since claimant does not read or write English, the warning was read to him.

Claimant did not receive notice he had a mandatory meeting for August 1. He had an issue with operating his saw safely on August 2 that he raised with his supervisor. This is the reason he discontinued his work and left.

Management confronted claimant about missing the employee meeting and leaving work without supervisor permission on August 1 and August 2. The employer discharged claimant on August 5 for the recent incidents in light of prior warning discipline.

Claimant had an issue with his supervisor about taking bath room breaks when he needed to go and rough treatment.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes employer has failed to establish claimant was discharged for a current act of misconduct in connection with employment on August 5, 2013. The employer must establish the most recent incidents are for misconduct.

The employer offered claimant supervisor statements but not direct testimony. Claimant denied knowledge of a mandatory meeting on August 1 and the employer did not offer any document notice to employees or a roster of other employees attending to refute claimant.

Claimant offered a good cause for refusing to saw meat on August 2 that had nothing to do with his pay rate. Claimant had a safety issue that was not refuted. The claimant was at a serious discipline disadvantage due to his lack of reading and writing English and a reasonable inference is his supervisor took advantage of it. Job disqualifying misconduct is not established due to a lack of a current act(s) of misconduct.

**DECISION:**

The department decision dated August 23, 2013, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on August 5, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs