

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE COREAS
Claimant

APPEAL NO. 120-UI-13562-VST

WEST LIBERTY FOODS LLC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/15/12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated July 13, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 5, 2012. The claimant participated personally. The employer participated by Nikki Bruno, human resources supervisor. The record consists of the testimony of Nikki Bruno and the testimony of Jose Coreas. Ike Rocha served as Spanish interpreter for the claimant.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a meat processing facility located in West Liberty, Iowa. The claimant was hired on June 2, 2010, as a full-time production general laborer. His last day of work was June 11, 2012. He was terminated on June 18, 2012.

The incident that led to the claimant's termination occurred on June 7, 2012. The claimant had been given a directive or expectation on October 18, 2011, concerning his interactions with a female team member. The claimant and the female co-worker were told that they were to behave in a professional manner; have only work-related communications and show dignity and respect. They were also informed that if they failed to follow this directive that termination could result. On June 7, 2012, the claimant thought that this female co-worker was following him. Instead of reporting this to a supervisor, he walked up to her and started a conversation. This conversation was not work related but rather concerned personal matters.

A supervisor reported this conversation to management. An investigation ensued. The claimant admitted talking to this co-worker and saying that she should tell the truth, that she was falling in love with him. The claimant was terminated for failing to follow the October 18, 2011 directive.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The claimant had been given a warning or directive for future contact with a female worker. The employer had specifically told the claimant that he was not supposed to have any non-work-related conversation with the female co-worker. A failure to follow that directive would lead to his termination. The claimant specifically violated that expectation by initiating a non-work-related conversation with the

female co-worker. The conversation concerned personal issues that existed between them. This violation is misconduct. Benefits are denied.

DECISION:

The decision of the representative dated July 13, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs