

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PEDRO GOMEZ**  
Claimant

**APPEAL NO. 10A-UI-11282-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 07/11/10**  
**Claimant: Appellant (2)**

Section 96.5-2-A – Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 10, 2010, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 28, 2010. Claimant participated. Employer participated by Nikki Bruno, Human Resources Generalist. The record consists of the testimony of Nikki Bruno and the testimony of Pedro Gomez. Celia Huante served as Spanish interpreter.

**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 packing/processing facility located in West Liberty, Iowa. The claimant was initially hired on June 12, 2000. His last day of work was July 9, 2010. He was terminated effective July 13, 2010. At the time of his termination, the claimant's job was "horse operator." A horse is a powered industrial jack that is driven and is sometimes called a horse truck.

The incident that led to the claimant's termination occurred on July 8, 2010. The claimant was operating the horse truck and accidentally hit a beef stuffing machine known as the INOX. The INOX operator turned off the machine and when he tried to re-start the machine, it would not turn on. The hit from the horse truck caused a valve to come loose. No damage was done to the machine.

The incident was reported to human resources by Amber Nelson, Quality Assurance Manager. The claimant was called to the office to be interviewed as part of the investigation. He admitted to hitting the INOX once with the horse truck. He also admitted that he did not immediately report the matter to management. The employee handbook states that the failure to properly report an unsafe act, injury or damage to equipment immediately is a major rule violation.

The claimant had been suspended on April 26, 2010, for an unsafe act when he hit another employee with the horse truck. He was issued a counseling on April 23, 2010, for poor work performance and an incident report for job performance was given on January 21, 2010.

#### **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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The definition of misconduct excludes an error of judgment or discretion in an isolated situation or simple negligence. The employer has the burden of proof to show misconduct.

The reason the claimant was terminated was his failure to immediately report that he had struck the INOX machine with his horse truck. The claimant's explanation was that he actually hit a table next to the machine and that there had not been enough space to maneuver the truck without striking the table. The greater weight of the evidence is that the claimant did not deliberately hit either the table or the machine. He did not report the incident immediately

because he finished up some work; went on his half hour break; and was then called in to human resources to explain the situation. He had reported prior incidents to management.

The administrative law judge concludes that the claimant's failure to immediately report the incident was more an error of judgment or discretion rather than a deliberate breach of the employer's rules. The employer and the claimant do disagree on whether there was sufficient time for the claimant to come forward before the investigation ensued. The claimant made a poor decision to go on break without reporting the incident to management. However, given the totality of the circumstances, the administrative law judge does not believe that misconduct has been shown. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated August 10, 2010, reference 02, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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