

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

RANDY J GERST
433 REBER AVE
WATERLOO IA 50701

BEEF PRODUCTS INC
891 TWO RIVERS DR
DAKOTA DUNES SD 57049-5150

Appeal Number: 04A-UI-12507-SWT
OC: 10/24/04 R: 01
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 15, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 13, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Rick Wood participated in the hearing on behalf of the employer with witnesses, Jennifer Stubbs, Maureen Goss, and Brad Mayhan.

FINDINGS OF FACT:

The claimant worked full time for the employer as a quality control supervisor for the employer from June 16, 2000 to October 23, 2004. The claimant had received a final written warning on December 11, 2002, for failing to communicate immediately with the quality control supervisor about a quality issue. He received a suspension on June 12, 2003, because he and other supervisors had failed to discover that a tanker car was mislabeled as inedible tallow. He

received a final written warning on August 12, 2004, for failing to notice that equipment had not been properly cleaned during a pre-operation inspection he had conducted.

On October 23, 2004, the claimant was involved in checking on an ammonia shipment, which required him to observe the transfer of the ammonia throughout the transfer process. At that time, the claimant heard over the radio that an o-ring had fallen into the product and the supervisor in charge, Brad Mayhan, was going to shut down the plant and flush out the equipment. Under the employer's standard operating procedure, a quality control supervisor was not required to handle this issue and the ammonia transfer would take precedence. Later, the claimant spoke to Mayhan in the lab and he described what he had done to resolve the problem. He asked the claimant to call the corporate quality control manager, Pat Hathaway, to alert him about the issue. The claimant went to the office to call Hathaway, but before he could initiate the call, Hathaway called the claimant and asked him why the claimant had not called him immediately. The claimant could have called from the lab, but he did not see any problem with calling from the office. There was a difference of about ten minutes from the time that he talked to Mayhan and he received the call from Hathaway.

The employer discharged the claimant on October 25, 2004, for failing to immediately contact Hathaway about the o-ring issue on October 23 and because of the prior discipline the claimant had received.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

871 IAC 24.32(1)a, (8) provide:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, no current act of work-connected misconduct as defined by the unemployment insurance law has been established in this case. The claimant responded to Mayhan's request in a reasonable time and the claimant was dealing with an issue that required his attention when he learned of the problem with the o-ring.

DECISION:

The unemployment insurance decision dated November 15, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjf