

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT MITCHELL
Claimant

APPEAL NO: 08A-UI-09618-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS DAIRY INC
Employer

OC: 11/18/08 R: 01
Claimant: Respondent (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Wells Dairy, Inc. (employer) appealed an unemployment insurance decision dated October 9, 2008, reference 01, which held that Scott Mitchell (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 4, 2008. The claimant participated in the hearing. The employer participated through Alfredo Moreno, Human Resources and employer representative Judy Gentry. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired full-time on April 4, 2005 and was recently working as a blender operator when he was discharged on August 7, 2008. If an employee violated the employer's lock-out/tag-out policy, he or she was suspended for five days and was given a final warning which did not expire. The employee would be discharged upon any subsequent safety violation. The employer changed its disciplinary policy to limit the final warning time to a period of three years.

The claimant received a five-day suspension for a lock-out/tag-out violation on December 13, 2005. He was discharged for a second safety violation after he was found lying down in the dark in an unauthorized room on August 5, 2008. The room is an electrical room and only authorized personnel are allowed in this room. The claimant had no business reason to be in the room at that time. A security guard found him lying down on the ground in the dark and reported it to the employer. The claimant was not on an authorized break and was not in the break room where employees take breaks. He explained that he was lying down in that room because his back hurt.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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.

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).

The claimant was discharged per policy for a second safety violation, which occurred within three years of his final warning. The violation occurred on August 5, 2008 when he was found lying down in an unauthorized area instead of working. The claimant explained that his back hurt but he should have left work if his back hurt as opposed to being paid for lying down. However, misconduct must be substantial in nature to support a disqualification from

unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. While the claimant's conduct was certainly not acceptable, there is no evidence of any wrongful intent. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated October 9, 2008, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs