

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIGUEL A RIVERA
Claimant

APPEAL NO. 13A-UI-00067-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEBSTER CITY CUSTOM MEATS INC
Employer

OC: 12/02/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Miguel Rivera (claimant) appealed a representative's December 31, 2012 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Webster City Custom Meats (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 4, 2013. The claimant participated personally. The employer participated by Connie Ingraham, President, and Chip Abbot, Plant Operations Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant had many periods of employment with the employer. He was rehired on November 21, 2011, as a part-time smoke house operator. The claimant signed for receipt of the employer's handbook on November 21, 2011. The employer issued the claimant written warnings for tardiness on April 4, September 5, and December 1, 2012. The employer notified the claimant that further infractions could result in termination from employment.

The claimant worked alone without very much supervision. His supervisor had instructed him that he was to make certain that his two smoke houses were done, clean up, and leave after the third shift worker arrived. On December 1, 2012, the claimant arrived at work at 2:57 p.m. At 6:10 p.m. the third shift worker arrived. The third shift worker complained to the claimant about the claimant's work. The claimant listened and was angry but knew he was performing his work properly. The claimant told the third shift worker he would be leaving at 8:30 p.m. when his work was done.

At about 8:35 p.m. the claimant's work was complete and he tried to find the third shift worker. The claimant did not know that the third shift worker left at 7:15 p.m. without notifying anyone.

At 8:35 p.m. the claimant informed another worker that he was leaving and that his work was done. The other worker said he would tell the co-worker. At 10:17 p.m. the co-worker appeared for work.

On December 3, 2012, the employer discovered \$50,000.00 worth of uncooked product from December 1, 2012. The employer terminated the co-worker and the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence of job-related misconduct. The claimant followed his supervisor's instructions. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 31, 2012 decision (reference 02) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/tll