

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TROY F HESSE**  
Claimant

**BAY VALLEY FOODS LLC**  
Employer

**APPEAL 19A-UI-02882-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/17/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On April 5, 2019, the claimant filed an appeal from the March 28, 2019, (reference 02) unemployment insurance decision that denied benefits based on his discharge for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on April 25, 2019. Claimant participated and testified. Employer participated through Human Resource Manager Dena Perez. Employer's Exhibits 1 through 3 were received into evidence.

**ISSUE:**

Was the claimant discharge for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 22, 2011. Claimant last worked as a full-time machine operator. Claimant was separated from employment on February 12, 2019, when he was terminated.

The employer has a variety of safety policies and procedures in place. Within the last year the employer has begun to take these policies more seriously and enforced these policies more than it previously had. Claimant took a computer based training on proper lock-out/tag-out procedures on February 20, 2018 and completed hands on validation of the training as recently as January 4, 2019.

On March 29, 2018, claimant was issued a verbal warning for failing to wear his proper safety gear (PPE). (Exhibit 3). On September 21, 2018, claimant was issued a final written warning after he failed to follow proper log-out/tag-procedure while trying to unclog a machine. (Exhibit 2). The incident resulted in claimant severing the tips off two of his fingers. Claimant understood, after receiving that warning, that further incidents could lead to his termination.

On February 5, 2019, claimant was cleaning a paddle conveyor. When he began work he shut the machine off and placed a lock on the belt. Claimant cleaned the machine and unlocked the belt to test it. When claimant was finished he was putting the cover on when he noticed he missed a spot. Without putting the lock back on the belt, claimant proceeded to clean it with a screw driver. A supervisor was standing nearby and noticed what claimant was doing. When claimant stopped, the supervisor came over, put the lock on, and explained the proper technique to claimant and an employee he was training. Claimant told the supervisor he had forgotten to put the lock back on, which was required by proper lock-out/tag-out procedure. Claimant was subsequently discharged from employment.

Claimant alleges other employees have committed similar safety violations and were not disciplined. The employer testified multiple employees have been disciplined for safety violations and some of that disciplinary action has included termination.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant failed to follow proper lock-out/tag-out procedures after having been warned and following his own serious injury. This was in deliberate disregard of employer's interest and constitutes misconduct, even without prior warning. Even though claimant alleges other employees engaged in similar unsafe conduct without being terminated, there is no evidence indicating employer is not taking similar steps to discipline others accordingly.

**DECISION:**

The March 28, 2019, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs