

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY GAETA
Claimant

APPEAL NO: 10A-UI-02046-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 01/17/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

West Liberty Foods, L.L.C. (employer) appealed a representative's February 5, 2010 decision (reference 01) that concluded Timothy Gaeta (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 22, 2010. The claimant participated in the hearing. Nikki Bruno appeared on the employer's behalf and presented testimony from one other witness, Kamella Fuhlman. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 29, 2007. He worked full time as a dock utility worker on the second shift at the employer's meat processing facility. His last day of work was January 13, 2010. The employer suspended him on that date and discharged him on January 19, 2010. The reason asserted for the discharge was exhibiting an abusive, uncooperative and threatening/intimidating behavior towards other employees.

On January 13 the claimant began work and soon found that the incorrect trailer and been placed into the dock. He went to speak about it to Ms. Fuhlman, the second shift shipping and receiving supervisor, but she was busy, so he attempted to speak to the lead worker, but he was talking to a driver. The claimant became somewhat frustrated and muttered that "this is b - - - s - - -," and went about his other duties. He later had a discussion with another employee and suggested to the employee that he deal with a load that was waiting. That employee later came back to the claimant and told the claimant that Ms. Fuhlman wanted the claimant to take care of that load. The claimant proceeded to take care of that load. The other employee reported to Ms. Fuhlman that when the claimant was told he was to do the load he had responded that he would "do whatever the f - - - I want to do." The claimant denies making that statement.

By the time the report was made back to Ms. Fuhlman it was about 10:00 p.m. and the claimant was on break having a cigarette. Ms. Fuhlman went out to the claimant and told him that he was to come in, call his ride, and go home. The claimant was surprised and asked her to clarify that he was done, which she confirmed. Ms. Fuhlman indicated that at that point the claimant said "this is f - - - ing b - - - s - - -." Although the claimant was upset, he denies saying this to her. Ms. Fuhlman further indicated that the claimant then came into the office and threw a clip board four to five feet at the desk, causing further intimidation. After the claimant was told to leave he did come in and sign out on a clip board that was tossed down on the desk, but he denies throwing it or any other clip board as described by Ms. Fuhlman.

About a week prior to January 13 the claimant had come to work in a bad mood because of personal issues; he had been verbally counseled by Ms. Fuhlman to "chill out." After that, when he was in a bad mood he consciously tried to stay away from other employees while he worked so as not to let his personal issues affect his interactions with coworkers. Because of the events of January 13, the employer then discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the allegation of abusive, uncooperative, and threatening/intimidating behavior on January 13, 2010. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to

establish by a preponderance of the evidence that the claimant was actually abusive, uncooperative, and threatening/intimidating, as compared to simply being in a bad mood. The claimant was told he was suspended because of a report that he had told another employee that he would “do whatever the f - - - I want to do” when told to do a particular assignment. However, the claimant denied saying this in his sworn testimony, and the employer did not substantiate this claim with any first-hand evidence or testimony. The remainder of the conduct asserted occurred after the claimant had been told he was suspended.

The administrative law judge does not find that the employer has established that the claimant “threw” a clip board in any threatening or intimidating manner. As to the use of vulgar language toward Ms. Fuhlman, while she did provide first-hand testimony, the administrative law judge finds that her testimony was frequently hesitant and unresponsive to the question asked, diminishing its credibility. To the extent that the claimant may have used vulgar language or slammed a door after being told he was being suspended, under the circumstances of this case, the claimant’s behavior was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative’s February 5, 2010 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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