IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PAUL A TERBEEK
Claimant

HORMEL FOODS CORPORATION
Employer

APPEAL NO: 13A-UI-11495-ST

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/08/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 30, 2013, reference 02, that held he was discharged for misconduct on September 5, 2013, and benefits are denied. A telephone hearing was held on November 5, 2013. The claimant participated. Frank Velasquez, HR Manager, participated for the employer. Employer Exhibit 1 and Claimant Exhibit A was received as evidence.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on November 8, 2012, and last worked for the employer as a full-time production employee on September 5, 2013. Claimant filed a claim for a job injury May 24, 2013 and the employer provider investigated it.

The provider learned claimant had a minor back injury at a former employer and he received a few chiropractic treatments. When he filled-out his pre-employment application/questionnaire, he answered no that have you had or do you have back trouble or back pain. He answered no to neck or shoulder pain, aching numbness or tingling.

Claimant had returned to work on July 31, 2013. The employer called claimant into an investigatory meeting on September 6 and it questioned him about his employment questionnaire information. It wanted to know why he failed to report his accident back injury at his former employer. Claimant believed the back pain or trouble question applied to the current November 8, 2012 date and he had none. There is no evidence he had suffered any permanent injury. The other question does not ask about back pain in the past so he answered no.

The employer terminated claimant for falsification of his employment application that is a termination offense pursuant to employer policy on September 6.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes employer filed to establish claimant was discharged for misconduct on September 6, 2013 for job application falsification.

The questionnaire questions are vague and general. The employer did not offer what medical information the provider had about the pre-employment injury and when it occurred. The best evidence is claimant suffered a minor back injury, had some rehabilitative chiropractic treatment and returned to work without any permanent disability. The pre-employment minor injury does not show a direct relationship to claimant’s current job-related injury. There is no nexus between the past and present injury.

His questionnaire responses are not dishonest and he committed no application falsiification violation. Job disqualifying misconduct is not established.

DECISION:

The department decision dated September 30, 2013, reference 02, is reversed. The claimant was not discharged for misconduct on September 6, 2013. Benefits are allowed, provided claimant is otherwise eligible.

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Randy L. Stephenson
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs