

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER P BOOS**  
Claimant

**APPEAL NO: 06A-UI-08387-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 07/23/06 R: 04**  
**Claimant: Respondent (1)**

Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

West Liberty Foods filed a timely appeal from the August 10, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 6, 2006. Claimant Christopher Boos participated. Human Resources Manager Jaime Ruess represented the employer. Employer's Exhibits One through Three were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits. He was not.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Christopher Boos was employed by West Liberty Foods as a full-time maintenance mechanic from September 7, 2004 until July 17, 2006, when Human Resources Manager Jaime Ruess and Maintenance Supervisor Eric Runge discharged him. The final incident that prompted the discharge came to the attention of the employer on July 10. At that time, an employee reported to Supervisor Lanna Jepson that Mr. Boos had intentionally knocked some meat product and some napkins off the production line and onto the floor while he worked on a packaging machine. The employee further reported that Mr. Boos poked holes in some packaging material on the production line. Ms. Jepson reported this matter to Maintenance Supervisor Eric Runge. Ms. Jepson also reported she had observed Mr. Boos had been "flipping" blades from a cutting machine around while he worked on a machine, thereby creating a safety hazard. Mr. Runge spoke with the employee who originally reported the matter. That employee indicated that another employee had been in break room when Mr. Boos lost his temper, cleared a table with his arm, and caused damage to the break room wall. The employer declines to identify the employee who made the initial report or the employee who allegedly witnessed a break room incident.

On July 13, Ms. Ruess, Mr. Runge and another maintenance supervisor questioned Mr. Boos about the allegations. Mr. Boos denied each allegation. Mr. Boos indicated that he had needed

to poke holes in the plastic wrap to test the strength and thickness of the plastic to determine whether the machine that stretched the plastic required adjustment. Mr. Boos indicated that while he was working on the machine, a machine guard had gotten hooked on a hose and this had knocked some meat product onto the floor. Mr. Boos indicated that while he worked on the machine with the cutting blades he had merely flipped the machine part and placed it in a resting place designed to hold it while he worked. Mr. Boos indicated that he was required to work quickly to meet the needs of the production line.

Thereafter, Mr. Boos was on a funeral leave and returned to work on July 17. The employer considered the recent allegations and a prior allegation that Mr. Boos had become angry and thrown tools and decided to discharge Mr. Boos.

The employer did not present testimony from the complaining employee, the employer who allegedly witnessed a break room incident, Ms. Jepson, or Mr. Runge, though all of these individuals continue in their employment.

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

The question is whether the evidence in the record establishes that Mr. Boos was discharged for misconduct in connection with the employment. It does not.

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer's case is comprised almost exclusively of hearsay evidence. The employer's evidence regarding the allegations against Mr. Boos is based on multiple layers of hearsay. The employer had the ability to present much more direct and satisfactory evidence, but elected not to do so. The evidence in the record amounts to unsubstantiated and uncorroborated allegations of misconduct. Mr. Boos provided plausible explanations to rebut the allegations of misconduct.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Boos was discharged for no disqualifying reason. Accordingly, Mr. Boos is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Boos.

#### **DECISION:**

The Agency representative's August 10, 2006, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw