

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PETER K DAGADU**  
Claimant

**APPEAL NO: 09A-UI-06884-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 04/05/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Peter K. Dagadu (claimant)) appealed a representative's April 23, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with West Liberty Foods, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 1, 2009. The claimant participated in the hearing. Jean Speis appeared on the employer's behalf and presented testimony from two witnesses, Jeff Baker and David Greiwe. During the hearing, Employer's Exhibit One was entered into evidence. 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 July 7, 2008. He worked full time as a quality assurance supervisor in the second shift. His last day of work was March 30, 2009. The employer discharged him on that date. The reason asserted for the discharge was poor job performance by failing to adequately respond and contain a potential health risk.

On March 26 the claimant was summoned to the line when workers encountered a hard plastic item in a three-foot log of pepperoni which was being sliced. The claimant did find plastic shards in the product. He therefore tagged and excluded the container or coffin (approximately 3,000 pounds) of product. Under the employer's containment procedures, on an initial incident the quality control person has discretion as to whether to only sequester the current container of product. The employer asserted that about 35 minutes later some additional plastic was found in another container/coffin, that the claimant was summoned but did not respond, so the entire lot was processed. The next day the matter was further reviewed and the entire lot was sequestered. The claimant had been given a verbal warning in October 2008 for needing to take greater care when a potential allergen (cheese) was introduced into a meat product (ham).

In February 2009 he was given a performance evaluation advising him that his responsiveness needed improvement, that he was not adequately involved in issues or responding to calls).

The employer concluded that the claimant had not adequately responded to the issue of the foreign material on the March 26 shift, and that he should have contained the entire lot when the second container/coffin was also found contaminated with the material. The claimant denied that he had been summoned or had failed to respond to a summons after the initial incident.

#### **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 his handling of the foreign material contamination on March 26. In concluding that the claimant did not respond to a subsequent summons after the initial summons, the employer relies on the second-hand accounts from unidentified persons; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether those persons might have been mistaken, whether they were in a position to accurately observe the situation, whether they are credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of the reports. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. There is no evidence the claimant intentionally failed to respond or failed to exercise his discretion appropriately given the information he had at the time. 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 April 23, 2009 decision (reference 01) is reversed. 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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